

DAVID T. DUCHARME

STATE OF WASHINGTON v AMERICAN TOBACCO, ET AL JUNE 3, 1998

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CONDENSED TRANSCRIPT
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(1) IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 (2) IN AND FOR THE COUNTY OF KING
 (3)
 (4)
 (5) STATE OF WASHINGTON,)
 (6) Plaintiff)
 (7) vs) NO. 96-2-15056-8SFA
 (8) AMERICAN TOBACCO COMPANY,)
 (9) et al.)
 (10) Defendants)

(11) * VIDEOTAPED DEPOSITION OF DAVID T. DUCHARME

(12) June 3, 1998
 (13) Seattle, Washington

(14) BYERS & ANDERSON INC.
 (15) COURT REPORTING & VIDEO

(19) (20) (21) (22) (23) (24) (25)
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(1) APPEARANCES (Continuing):
 (2) The Videographer:
 (3) MARINA VALLEJO

EXAMINATION INDEX

(4) EXAMINATION BY: PAGE NO.
 (5) MR. LEEDOM 6

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
1235	1-page privilege log for documents produced by Philip Morris Lobbyist David Ducharme.	104

(1) APPEARANCES
 (2) For the Plaintiff
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(1) BE IT REMEMBERED that on June 3,
 (2) 1998, at 999 Third Avenue, Suite 2150, Seattle,
 (3) Washington, at 1:00 p.m., before KARMEN M.
 (4) KNUDSON, CCR, RPR, Notary Public in and for the
 (5) State of Washington, appeared DAVID T. DUCHARME.
 (6) the witness herein;
 (7) WHEREUPON, the following
 (8) proceedings were had, to wit:

(9)
 (10) < < < < < > > > > >
 (11)
 (12) THE VIDEOGRAPHER: Good
 (13) afternoon. We are now on the record. My name is
 (14) Marina Vallejo, videographer for Byers & Anderson
 (15) Court Reporters, based at 2208 North 30th, Suite
 (16) 202, Tacoma, Washington, 98403. Our telephone
 (17) number is 253-627-6401.
 (18) Today is May 3rd, 1998 -
 (19) MR. BUTLER: June 3rd.
 (20) THE VIDEOGRAPHER: June 3rd,
 (21) 1998, and it is now 1:18. This is the videotaped
 (22) deposition of David Ducharme, taken in the case of
 (23) State of Washington versus American Tobacco, et
 (24) all, cause number 96-2-15056-8.
 (25) This deposition is being held at Bennett.

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(1) Bigelow & Leedom, 999 Third Avenue, Seattle,
(2) Washington.
(3) Will the attorneys please introduce themselves
(4) for the record.
(5) **MR. LEEDOM:** Yes. This is
(6) Bill Leedom from Bennett, Bigelow & Leedom,
(7) representing the plaintiff, State of Washington.
(8) **MR. BUTLER:** Timothy Butler.
(9) Heller Ehrman White and McAuliffe, representing
(10) defendant, Philip Morris.
(11) **MR. ZAKNOEN:** Edward Zaknoen,
(12) Winston & Strawn, representing Philip Morris.
(13) **MR. THOMAS:** Jeff Thomas, Gordon
(14) Murray Tilden, representing Tobacco Institute.
(15) **MR. COLLINS:** Sven Collins,
(16) Bennett, Bigelow & Leedom, representing the State
(17) of Washington.
(18) **MR. WILSON:** I'm John Wilson.
(19) Wilson, Smith, Cochran & Dickerson, representing
(20) Smokeless Tobacco Council.
(21) **THE VIDEOGRAPHER:** The court
(22) reporter today is Karmen Knudson.
(23) You may swear in the witness and proceed at
(24) this time.
(25) ////

(1) have a duty to disclose accurate and reliable
information to those who you are lobbying?
(2) **MR. BUTLER:** Object to the use
(3) of the term "duty;" calls for a legal conclusion.
(4) Q (By Mr. Leedom) Go ahead.
(5) A I think that I have a personal responsibility in
(6) my business to do that. I don't know of any legal
(7) duty that is required.
(8) Q So you personally believe that you should provide
(9) accurate information and reliable information to
(10) those who you are lobbying?
(11) A Yes, I do.
(12) Q Okay. In terms of your background, would you tell
(13) us about where were you born and raised, where you
(14) went to high school, college, that sort of thing.
(15) A Born and raised in the greater Seattle area, which
(16) would include surrounding cities such as Bellevue
(17) and Renton, Mercer Island, Washington, went to
(18) Mercer Island High School, graduated in 1981,
(19) attended the Washington State University from '81
(20) to '83, attended and graduated from the University
(21) of Washington subsequent to that in 1986,
(22) graduated from the University of Puget Sound
(23) School of Law, now Seattle University, in 1989,
(24) January of 19 - excuse me, 1990, went to work for
(25) January of 19 - excuse me, 1990, went to work for

(1) DAVID T. DUCHARME, having been first duly sworn
(2) deposed and testified as
(3) follows:
(4)
(5) **EXAMINATION**
(6) **BY MR. LEEDOM:**
(7) Q Mr. Ducharme, would you state your full name for
(8) the record and spell your last name, please.
(9) A David Thatcher Ducharme, D-U-C-H-A-R-M-E.
(10) Q What is your residence address?
(11) A [REDACTED]
(12) **MR. BUTLER:** Mr. Leedom, before
(13) we get in, can I make a statement for the record.
(14) briefly?
(15) **MR. LEEDOM:** Certainly.
(16) **MR. BUTLER:** We expect the scope
(17) of this deposition to be governed by the court's
(18) order of February 17th, 1998, and specifically
(19) indicated on Pages 13 and 14, that the subject
(20) matter of the deposition questioning shall be
(21) limited to issues of smoking and tobacco use and
(22) health-related issues, and the time frame of the
(23) deposition will be up to the time of the filing of
(24) (25)

(1) the Office of the Attorney General, representing
(2) the Labor & Industries Division, until January of
(3) 1993, at which time I sought employment as a
(4) lobbyist in the state legislature.
(5) Q Okay. How old are you?
(6) A I'm 34.
(7) Q Married, single?
(8) A Married.
(9) Q And family?
(10) A I have two children.
(11) Q What was your major at the UW that you graduated
(12) with in 1986?
(13) A Political science.
(14) Q Had you done any lobbying-type activities through
(15) your college years -
(16) A No.
(17) Q - through '86?
(18) A No.
(19) Q Study about it?
(20) A No.
(21) Q Didn't take the class on lobbying?
(22) A No.
(23) Q Okay. What did you do from '86 to '89?
(24) A That was when I was at the University of Puget
(25) Sound Law School.

(1) the complaint in this case.
(2) In Mr. Ducharme's case, that will date from
(3) October '95, when he began working for Philip
(4) Morris, up to the date of the filing of the
(5) complaint.
(6) **MR. LEEDOM:** Thank you. I do
(7) have the order in hand. I'm not so certain about
(8) your time limitations, although anything after the
(9) filing I understand to be within the court's
(10) jurisdiction. But we'll proceed. He may have had
(11) no involvement whatsoever with tobacco-related
(12) matters prior to the fall of 1995.
(13) **MR. BUTLER:** That's exactly
(14) right, and you'll find that out momentarily.
(15) Q (By Mr. Leedom) All right. Mr. Ducharme, your
(16) occupation, please?
(17) A I'm a lobbyist.
(18) Q How do you define a lobbyist?
(19) A I represent individual clients' interests in the
(20) state legislature, which involves monitoring
(21) issues that may or may not be of interest to
(22) clients, as well as providing information to
(23) legislators and legislative staff on issues as
(24) directed by my clients.
(25) Q As a lobbyist, under your definition, do you

(1) Q Those - the three years?
(2) A Correct.
(3) Q And during that time, did you have any special
(4) interest in your law school career?
(5) A Not particularly, no.
(6) Q And when you graduated - did you participate in a
(7) law degree?
(8) A No.
(9) Q What was your third year project on?
(10) A I didn't have a third-year project.
(11) Q Did you have a seminar, third year?
(12) A I think we had a white collar crime seminar that I
(13) participated in. It wasn't a project that was
(14) required; it was an elective course.
(15) Q Did you write a paper on that?
(16) A Yes, I believe we did.
(17) Q "We" meaning some team that you were on?
(18) A Actually it was just a - a law school friend of
(19) mine that was in the class as well.
(20) Q Did you study at all in law school anything
(21) related to the tobacco industry, specifically
(22) regulation of the tobacco industry?
(23) A No.
(24) Q All right. Then you went to work, you said 1990
(25) to 1993, at the AG's office.

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(1) A Correct.
 (2) Q Was there any period in between your graduation and beginning work for the AG's office at all?
 (4) A I'm sorry, a period of employment?
 (5) Q Well, you said you graduated in '89 and began working with the AG in 1990. It sounds like there is a gap in there that you might have done something else.
 (9) A Well, from May of '89 when I graduated and thereafter, I started studying for the bar exam.
 (11) So the bar exam I believe was taken in July,
 (12) results not out until October. Following passage of the bar, I was looking for employment.
 (14) Q Did you have any employment in the fall of '89?
 (15) A Not that I can recall.
 (16) Q Who was your supervisor at the L&I - AG L&I Division?
 (18) A Merideth Morton.
 (19) Q Was Phil Hubbard involved at all in L&I at that time?
 (21) A I don't believe so. I think that Phil came on board subsequent to Attorney General Gregoire being sworn into office.
 (24) Q What sort of work did you do in the L&I Division of the AG's office?
 (25) A

(1) hourly work from him during that interim period.
 (2) I worked at establishing a client base, just
 (3) interviewed for some client opportunities.
 (4) That's - that's essentially it.
 (5) Q Who was your first client as a lobbyist?
 (6) A The Utility Contractor's Association of
 (7) Washington.
 (8) Q And was that a client you represented in the '94 session?
 (10) A Yes.
 (11) Q All right. Let's take the '94 session. Which clients did you have for the '94 session?
 (13) A I had the Utility Contractor's Association, I believe that I had the Northwest Hydroelectric Association, I believe that I had the Washington Self-Insurer's Association.
 (17) I represented, for a session only with another lobbyist, a group called the Evergreen Growers - I think it was the Evergreen Growers Group. I can't remember specifically.
 (21) Q Did you have any other employment during the period from '93 through the '94 session?
 (23) A Not that I can recall.
 (24) Q So the only thing you were doing was lobbying -
 (25) A Correct.

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(1) A I began doing pretty much a strict diet of industrial insurance defense work. I did a little bit of prevailing wage work enforcement of the state prevailing wage statutes. For some time, I did some - a little work in the wage and hour arena, another area administered and overseen by Department of Labor & Industries. I did some work for the Electrical Board, what was then called the Building and Construction Safety Inspection Services, which had to do with contractor registration, electrical contractor registration, elevator inspections; just a whole host of other areas that the Department of Labor & Industries is involved with.
 (15) Q Did you try any cases in superior court?
 (16) A I tried some industrial insurance defense cases that were on de novo appeal to superior court.
 (18) Q Isn't that when they read the record?
 (19) A That's correct.
 (20) Q I'm talking about actual trials in superior court.
 (21) A No.
 (22) Q But you did have lots of administrative hearings and proceedings and adjudications?
 (24) A Yes.
 (25) Q And why did you leave the Attorney General's

(1) Q - and trying to develop a clientele?
 (2) A Correct.
 (3) Q Did any of your clients have you advocate positions in the '93 session relative to any tobacco issues, such as taxation of tobacco products, limitation of access of tobacco products to minors, that sort of thing?
 (8) A No.
 (9) Q Okay, let's continue on.
 (10) '94 to '95, let's take that time period, up until the fall of '95, tell me what additional clients you were able to develop as a lobbyist.
 (13) A I had the Washington State Cable Communications Association.
 (15) Q Okay.
 (16) A I believe that was the only other one that I added, and I think that all the others remained the same.
 (19) Q And you said the Evergreen Growers was only a one-session client anyway, correct?
 (21) A I'm trying to recall. They may have come in late one session and then were involved in the following session. I can't be clear on that. I'd have to go back and take a look at my records.
 (25) Q Same question with respect to the '95 session:

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(1) Office in 1993?
 (2) A I was just looking for a change, nothing in particular.
 (4) Q And then what did you begin doing in 1993, then?
 (5) A In 1993, I went to work during the legislative session for some established lobbyists, just helping them out, learning the legislative process, assisting them with their client case loads.
 (10) Q And who did you work for?
 (11) A I worked for Ian McGowan, and I worked for the Associated General Contractors.
 (13) Q How long did you serve in this capacity of assisting or working with established lobbyists?
 (15) A For the first session, the 1993 legislative session, which was 105-day session, I believe.
 (17) Q Did any lobbyist that you worked for in that session have any tobacco clients?
 (19) A No.
 (20) Q All right. What happened after that, after the '93 session?
 (22) A After the '93 session, I did a little work, hourly work, for Ian McGowan, but as far as our contractor relationship was concerned, I wasn't receiving a retainer from him. So I did some

(1) Did you, on behalf of any of your clients, take any positions or advocate any positions concerning tobacco issues?
 (4) A No.
 (5) Q When were you first contacted by a tobacco company or tobacco-related interest to serve as a lobbyist?
 (8) A In 1994. I can't be specific as to the month, but sometime in 1994.
 (10) Q Who contacted you?
 (11) A Tracey Scott.
 (12) Q Is that a male or a female?
 (13) A Female.
 (14) Q So how do you spell the Tracey?
 (15) A T-R-A-C-E-Y.
 (16) Q And who is Tracey Scott?
 (17) A At the time, she was a regional director for government affairs, or assistant regional director for government affairs for Philip Morris.
 (20) Q What exactly is the regional director for government affairs for Philip Morris?
 (22) A I couldn't tell you how they specifically define it.
 (24) Q How did you understand?
 (25) A It was my understanding that she monitored and

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(1) directed the activities of lobbyists in a number of western states.
 (2) Q Do you know which states?
 (3) A Not specifically. I could take a stab at it. I think she has Washington and Oregon and Idaho and Alaska and Nevada. There may be another one. I'm not sure.
 (4) Q Does each of those states have one lobbyist hired by Philip Morris?
 (5) MR. BUTLER: Objection; lacks foundation.
 (6) A It's my understanding they have at least one.
 (7) Q (By Mr. Leedom) All right. Tell me about the contact from Tracey Scott in 1994. What happened?
 (8) A It was my understanding that they were looking at hiring a new contract lobbyist in Washington state, and they were inquiring as to whether or not I was interested in the position.
 (9) Q Who was your predecessor contract lobbyist for Philip Morris?
 (10) A Trevor Sandison.
 (11) Q How do you spell his last name?
 (12) A I don't know. S-A-N-D-I-S-O-N, maybe.
 (13) Q Is he still around?
 (14) A He is not lobbying any longer.

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(1) Q But does he live around the area?
 (2) A Yes, I believe he is down in the Thurston County area.
 (3) Q How long had Trevor Sandison been the lobbyist for Philip Morris prior to you?
 (4) A One year.
 (5) Q Tell me more about the conversation with Tracey Scott.
 (6) A I had lunch with her. She was interviewing potential candidates to assume the lobbying responsibilities for Philip Morris in Washington.
 (7) Q Had you solicited the work, or was it totally from their side they had solicited you?
 (8) A I believe that they had solicited me. I had met Tracey, maybe I had run into her - I just can't remember - I think at a business association meeting someplace, but I can't recall who - who made the initial contact.
 (9) Q What did she say that she wanted in a lobbyist, in a contract lobbyist? What qualifications, criteria?
 (10) A I can't recall a specific conversation where she outlined what she was specifically - meaning in exact detail what she was looking for.
 (11) Q Generally what did she say?

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(1) A I think she was looking for somebody to represent the interests of the company in the state legislature, monitor issues, report on issues that may or may not be of interest to them so that they could make the decision as to whether or not that was something of importance, and to provide information to legislators as directed by the company.
 (2) Q What part of 1994 was this, when this discussion occurred with Tracey Scott?
 (3) A It was post-session. Beyond that, I - '94 was a - excuse me, I'm just trying to - it was a short session.
 (4) It would have to have been somewhere between, I would say, May of '94 to September of '94, but I'm just - I'm guessing.
 (5) Q At the time that she initially spoke to you, were you aware that lawsuits had been filed by the states of Mississippi and Minnesota against the tobacco industry, seeking reimbursement for Medicaid expenses?
 (6) A I don't...
 (7) MR. BUTLER: Objection; assumes facts not in evidence, lacks foundation.
 (8) You may answer.

(1) whether or not children or people under the age of 18 ought to have access to tobacco products?
 (2) A No.
 (3) Q Did she ask you whether or not you felt that tobacco products caused certain diseases?
 (4) A No.
 (5) Q What did she ask you about in terms of your own personal background?
 (6) A She asked about my lobbying background, she asked what my goals were in terms of representing clients in the state legislature and where I wanted to be in five years, she asked me about some of my existing clients and my representation of them and their issues, she asked me if I had any problem representing the tobacco industry.
 (7) Q What did you say to that question?
 (8) A My response was that it seemed to me that the tobacco industry was under a lot of heat, but that I felt that it was a lawful product, that people make a choice as to whether or not they want to use those products or not, and that as long as it was a lawful product, that I didn't have a problem representing tobacco interests.
 (9) Q Did you, on your own initiative, take any steps to investigate the tobacco industry and the products

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(1) the industry sells?
 (2) A No.
 (3) Q Did you feel that that was not something that was important to do before you undertook the representation of an industry?
 (4) A I never thought about it.
 (5) Q Why wouldn't you think about that?
 (6) A I don't know. Why would I?
 (7) Q Well, didn't you think it was important to know whatever issues were in front of the tobacco industry, to know both sides of the issue, all sides of the issue?
 (8) A It never occurred to me.
 (9) Q I'm just wondering, how do you lobby to somebody if you don't know all the different viewpoints that are being advocated about a certain position?
 (10) A Well, it's always helpful to be as knowledgeable as possible on specific issues that you're asked to lobby for or on behalf of. That's - that's obvious.
 (11) I market myself as an expert in the legislature and the legislative process, so it's not necessarily necessary, at the time that I meet with the client, that I completely understand every issue that they have ever had or been

(1) involved with in their history.
 (2) I'm only specifically interested in issues that they are involved in currently, or may be involved in as they describe them to me. And if at any point in time I feel like I can't represent them and represent their best interest, then I deal with the client at that point in time.
 (3) Q You said that you understood that the tobacco industry was under a lot of heat at the time you were talking to Tracey Scott. What did you mean by that?
 (4) A Not necessarily - in terms of taxation. I know that they had just taken a big - a big tax hit in Washington state. I knew that Washington was among, if not the highest, state in terms of cigarette excise taxes. And so I knew that that was difficult.
 (5) I'm not sure - and again I think I stated this earlier, I'm not sure if I was aware that lawsuits had been filed, but, you know, just the things that you read in the newspaper every day, if you take them at face value, seemed like they were getting a lot of press.
 (6) Q Did that concern you?
 (7) A I don't recall being concerned at the time, no.

(1) Q You said that you felt that tobacco products were lawful products. What's your basis for saying that tobacco products are lawful products?
 (2) A The fact that you can walk into the store right now and buy a pack of cigarettes and smoke one if you choose to and that's your decision. That's the basis.
 (3) Q Did you ever consider whether or not they were really lawful or not, whether or not there might be some other information that has not been disclosed by the tobacco companies which would render the products not lawful?
 (4) MR. BUTLER: Objection; assumes facts not in evidence, requires speculation, calls for a legal conclusion, vague and ambiguous.
 (5) A No.
 (6) Q (By Mr. Leedom) You also said that you felt that these were products that people could make a choice about. What did you mean by that?
 (7) A I think people choose whether or not they want to smoke.
 (8) Q Do you really believe that?
 (9) A Yes, I do.
 (10) Q Do you think that children who utilize cigarettes, that is, children smokers, that is, people

(11) under the age of 18, choose to use those products?
 (12) A I don't know why they - yes.
 (13) Q Do you think they're competent to make a decision if they're under the age of 18?
 (14) A Well, I don't know what ages you're talking about, under the 18. Everybody under the 18 - under the age of 18?
 (15) Q Let's take 12. Do you think 12-year-olds are competent to make a choice to use tobacco products?
 (16) A I never thought about it. I guess I don't have an opinion on that.
 (17) Q Well, think about it. What do you think? Do you think 12-year-olds have the ability to make a choice on using tobacco products?
 (18) A Yes.
 (19) Q And why do you think that?
 (20) A Because why else would they do it if they didn't make the choice to do it. If they didn't decide in their minds that "I want to go and smoke a cigarette," for whatever reason they make that choice to do that.
 (21) Q And so that would be true of - no matter what the age was, under the age of 18, you would say that?
 (22) MR. BUTLER: Objection; vague

(1) and ambiguous, calls for both psychological and a legal conclusion, beyond the witness's competence.
 (2) Q (By Mr. Leedom) You can answer.
 (3) A Mr. Leedom, I don't know what goes on in people's minds individually when they decide to do or to not do something. So I just don't feel like I can specifically answer your question, other than saying, yes, when somebody decides that they're going to pick up a marble, they have so chosen to do that. Beyond that, I can't answer your question.
 (4) Q Do you think that tobacco companies should market tobacco products to individuals under the age of 18?
 (5) A No.
 (6) MR. BUTLER: Objection; beyond the scope of the inquiry, calls for a legal conclusion, calls for a - lacks foundation.
 (7) MR. LEEDOM: I hardly think it's beyond the scope of the inquiry.
 (8) Q (By Mr. Leedom) And your answer was what?
 (9) A "No."
 (10) Q Why not?
 (11) A Because it's unlawful.
 (12) Q What other reason?

(1) A That's sufficient.
 (2) Q Well, it may be. Are there any other reasons you have?
 (3) A No.
 (4) Q Now, I've read through a lot of your documents here and I saw one letter from Senator John Moyer from Spokane.
 (5) A Uh-huh. (Witness answers positively.)
 (6) Q Do you happen to remember that one out of all the thousands of pages that are here?
 (7) A No.
 (8) Q I'll refresh your memory. It has to do with - what's called "The Ravages of Tobacco," and in it Senator Moyer is supporting additional taxes on tobacco products on the basis that it's a huge health care cost that needs to be covered.
 (9) My question to you is: Did you notice in there the reference to the 3,000 people under the age of 18 each day that begin smoking tobacco products? Did you see that?
 (10) MR. BUTLER: I'll object to the question. It asks for conclusions about facts not in evidence, not placed before the witness, asks the witness to remember a document which he may or may not have seen, completely lacks foundation.

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(1) calls for speculation as to both what the
 (2) senator's letter might have said, the accuracy of
 (3) the senator's comments, and certainly the accuracy
 (4) of Mr. Leedom's secondary recitation of what those
 (5) facts might be.
 (6) If you have the document, Counsel, it might be
 (7) helpful to put it in front of the witness so he
 (8) can examine the entire document for any additional
 (9) information that would help him to establish a
 (10) recollection, and certainly would help him to
 (11) answer the question.
 (12) **MR. LEEDOM:** I'll show it to him
 (13) later.
 (14) **Q** (By Mr. Leedom) Can you answer my question as
 (15) it's posed?
 (16) **A** Can you rephrase it, please?
 (17) **Q** My question was: Based on the letter of
 (18) Dr. Moyer's, which is in the records, did you
 (19) notice the statement he made that approximately
 (20) 3,000 minors per day begin smoking cigarettes?
 (21) Did you notice that?
 (22) **MR. BUTLER:** I'll continue my
 (23) objection.
 (24) Mr. Ducharme, you have the right to ask
 (25) counsel to show you the document in order to

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(1) court's order is intended to permit inquiry into
 (2) what lobbyists said to legislators on the subjects
 (3) of smoking and tobacco use and health-related
 (4) issues. I do not believe it calls for inquiry
 (5) into their personal beliefs, to the extent that
 (6) those personal beliefs were not communicated in
 (7) any way on behalf of a client to the legislators.
 (8) Go ahead and ask your questions.
 (9) **Q** (By Mr. Leedom) So we'll – I'm going to ask the
 (10) questions, you give the answers, and if the judge
 (11) later agrees with Mr. Butler, then I guess we
 (12) won't be able to use that information.
 (13) So my question was –
 (14) **MR. LEEDOM:** Maybe you can read
 (15) back my question so I don't have to repeat
 (16) something again.
 (17) (Discussion off the record.)
 (18) (Question on Page 30, Lines 23
 (19) through 25, read by the
 (20) reporter.)
 (21)
 (22) **MR. BUTLER:** Objection; assumes
 (23) facts not in evidence, requires speculation beyond
 (24) the competence of the witness to answer. His
 (25) personal beliefs are irrelevant and not calculated

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(1) refresh your recollection so that you can answer
 (2) the question as truthfully as possible. You do
 (3) not have to answer the question based on his
 (4) speculation as to what is in the letter or his
 (5) representation of what's in the letter. If you
 (6) wish to look at the letter, you have the right to
 (7) do so.
 (8) **A** Please show me the letter.
 (9) **Q** (By Mr. Leedom) See, that objection means he
 (10) wants you to look at the letter, but I'm going to
 (11) show it to you later. I'm going to stand on my
 (12) question right now.
 (13) **MR. BUTLER:** And I'll stand on
 (14) my objection.
 (15) **Q** (By Mr. Leedom) Okay. He gets to make the
 (16) objection.
 (17) **MR. BUTLER:** Go ahead and answer
 (18) if you're able to.
 (19) **A** I probably read the letter. I assume that I did.
 (20) Whether or not I specifically recall that
 (21) particular reference that you're referring to, I
 (22) do not recall.
 (23) **Q** (By Mr. Leedom) Do you believe that 90 percent of
 (24) people who smoke begin smoking before the age of
 (25) 18?

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(1) to lead to the discovery of relevant evidence.
 (2) You may answer.
 (3) **A** I have no idea.
 (4) **Q** (By Mr. Leedom) Does that mean you don't have any
 (5) idea of the percentage at all?
 (6) **A** I don't have any idea of the percentage at all.
 (7) **Q** All right. Let's go back to the series of events
 (8) that led up to you being the contract lobbyist for
 (9) Philip Morris.
 (10) You've told me in general about the two
 (11) contacts between '94 and '95. Tell me about what
 (12) happened in '95, in the fall, when you consummated
 (13) the relationship. What happened?
 (14) **A** I started to work for the company in October of
 (15) '95.
 (16) **Q** Okay. Was there another discussion whereby you
 (17) agreed to serve as a contract lobbyist?
 (18) **A** Yeah, I – you know, and I can't recall if I met
 (19) personally with Tracey Scott or whether she just
 (20) expressed an interest, and I know that at one
 (21) point in time I went down and met with her
 (22) supervisor, Tina Walls.
 (23) **Q** Where did you have this meeting?
 (24) **A** In Tucson, Arizona.
 (25) **Q** And who is Tina Walls?

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(1) **MR. BUTLER:** Objection; outside
 (2) the boundaries of the scope of the investigation.
 (3) It has to do with pertaining to smoking and
 (4) tobacco use and to health-related issues as it
 (5) affects lobbying representations which may or may
 (6) not have been made to the legislators. I do not
 (7) believe the witness's personal beliefs or personal
 (8) knowledge on the subject of tobacco is a
 (9) legitimate topic, unless you intend to connect it
 (10) to what he might or might not have said to
 (11) legislators.
 (12) **MR. LEEDOM:** I'll say this once
 (13) on the record. If this witness has knowledge
 (14) about issues, such as minor use of cigarette
 (15) products, and he is communicating information to
 (16) legislators and he fails to communicate the
 (17) knowledge he has, then I think that as a lobbyist,
 (18) he is not complying with his ethical duty as a
 (19) lobbyist, nor as a lawyer, which he also is at the
 (20) same time.
 (21) So I have to explore to see what his knowledge
 (22) is. He may or may not know these things.
 (23) **MR. BUTLER:** Well, we'll reject
 (24) the assumptions behind your questioning, the
 (25) assumptions behind your statement. I believe the

(1) **A** Tina Walls was the head of state government
 (2) affairs for Philip Morris.
 (3) **Q** Nationally?
 (4) **A** Yes.
 (5) **Q** Was there an actual contract entered into?
 (6) **A** I did subsequently sign a contract with them, yes.
 (7) **Q** I notice that wasn't in these documents. Do you
 (8) have a contract?
 (9) **A** I do.
 (10) **Q** A written contract?
 (11) **A** Uh-huh. (Witness answers positively.)
 (12) **MR. BUTLER:** I believe I saw a
 (13) copy in the documents. Now, I could be mistaken.
 (14) Counsel, but I thought it was there.
 (15) **MR. LEEDOM:** I went through them
 (16) fairly carefully, but I – and I was looking for
 (17) that, so I didn't see it.
 (18) **Q** (By Mr. Leedom) Do you know whether or not – you
 (19) copied these things or you pulled them from your
 (20) files –
 (21) **A** I pulled them from my files. I believe I did
 (22) provide a copy of my contract at that time. If
 (23) you don't have a copy, I would be happy to provide
 (24) you a copy.
 (25) **MR. BUTLER:** By the way,

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(1) Counsel, just in case I forgot, we had asked you
 (2) to return the set of documents that did not have
 (3) the confidential stamp on them. I assume you will
 (4) do so?
 (5) Maury Scott Blank sent you a letter with that
 (6) request and provided a set of documents that had
 (7) the confidential stamp on them.
 (8) **MR. LEEDOM:** She faxed me a
 (9) letter today. Is that what you're referring to?
 (10) **MR. BUTLER:** No. Several weeks
 (11) ago she sent you letter enclosing a copy of all
 (12) of Mr. Ducharme's documents with confidentiality
 (13) stamps on them, requesting a return of that set
 (14) that did not have confidentiality stamps marked.
 (15) I just wanted to make sure —
 (16) **MR. LEEDOM:** We'll work that
 (17) out.
 (18) **MR. BUTLER:** Okay.
 (19) Q (By Mr. Leedom) Okay. The question now before
 (20) you is with respect to this contract.
 (21) So there is a written contract that you
 (22) executed in 1995 with Philip Morris?
 (23) A Yes.
 (24) Q What were the terms of the contract?
 (25) A Specifically I can't — I'd have to have the

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(1) industry — I just mentioned Mr. Bentler, who is
 (2) the lobbyist for RJ Reynolds. Since you have been
 (3) a lobbyist for Philip Morris, what are the other
 (4) lobbyists for the tobacco companies or Smokeless
 (5) or Tobacco Institute, that you are aware of?
 (6) A Bill Fritz.
 (7) Q That would be Tobacco Institute?
 (8) A Yes. Stu Halsan.
 (9) Q Smokeless?
 (10) A I think UST.
 (11) Mark Triplet.
 (12) Q Who does he work for?
 (13) A He currently has Smokeless Tobacco.
 (14) And Joe Daniels, and I couldn't tell you what
 (15) his affiliation is with the industry at all. Some
 (16) sort of a labor affiliation, but I'm not sure, but
 (17) you probably know that.
 (18) Q To your knowledge, has Brown and Williamson or
 (19) British American Tobacco had any lobbyists
 (20) retained by either of those two companies?
 (21) A Not to my knowledge.
 (22) Q Let's talk about meetings for a moment that you've
 (23) attended with other Philip Morris lobbyists since
 (24) you became the independent contracting lobbyist in
 (25) the state of Washington.

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(1) document in front of me to go item by item.
 (2) Q How much were they going to pay you for your
 (3) services?
 (4) A \$5,000 a month.
 (5) Q 12 months?
 (6) A Correct.
 (7) Q Has that amount changed since, or is it the same
 (8) still?
 (9) A It's changed since.
 (10) Q How much is it now?
 (11) A It is \$6,000 a month.
 (12) Q And in general, what did the contract provide that
 (13) you would do on behalf of Philip Morris?
 (14) A Essentially those services that I've given you by
 (15) definition of what a lobbyist does.
 (16) I think there is a retainer provision in
 (17) there, I think it asks that I file appropriate
 (18) state reporting documents for public disclosure
 (19) purposes, for example. It's got a termination
 (20) clause in there. I think it's got a media contact
 (21) clause in it that says that I don't talk to the
 (22) media, unless talking with the company, that I
 (23) don't make representations on issues until I have
 (24) approval from the company; a standard... (Pause.)
 (25) Q Did you receive W-2 forms for '95, '96, '97, for

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(1) MR. BUTLER: And up to the time
 (2) of filing of the complaint?
 (3) MR. LEEDOM: Yes, up until June
 (4) of '96.
 (5) MR. BUTLER: And I want to
 (6) caution the witness, feel free to answer as fully
 (7) and completely as possible, but to the extent that
 (8) such meetings might have involved counsel being
 (9) present and if there is some concern about
 (10) attorney/client privilege, I need to consult with
 (11) you before we give any answers that might impinge
 (12) on attorney/client privilege.
 (13) I don't think there are any, frankly, but I
 (14) just want to give that warning.
 (15) MR. LEEDOM: Okay.
 (16) Q (By Mr. Leedom) So let's take the period from the
 (17) fall of '95 when you were hired until June of '96
 (18) when this lawsuit was filed. Did you attend any
 (19) meetings on behalf of Philip Morris that were
 (20) attended by other lobbyists from the west or other
 (21) states?
 (22) A I attended one meeting in the — shortly after
 (23) being retained by Philip Morris, prior to the 1996
 (24) legislative session, where members of the other
 (25) industry were present. That was the only meeting

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(1) your payments from Philip Morris?
 (2) A No. I'm not an employee of Philip Morris. I do
 (3) receive 1099 forms.
 (4) Q So you would be an independent contractor?
 (5) A That's correct.
 (6) Q And you said you've reported all of the income
 (7) that you've received from Philip Morris to the
 (8) PDC?
 (9) A Yes, I have.
 (10) Q Other than your independent contractor status with
 (11) Philip Morris, which began sometime in 1995, have
 (12) you ever worked as a lobbyist for any other
 (13) tobacco-related concern?
 (14) A No.
 (15) Q And just so I'm clear, let me give you an example.
 (16) We had Mr. Bentler in here a week, or ten days
 (17) ago, and he lobbies for a group called — I think
 (18) it's Washington Association of Neighborhood
 (19) Stores, which happens to have tobacco members and
 (20) tobacco company memberships on its board.
 (21) So I just want to make sure there isn't any
 (22) such entity that you have worked for that would,
 (23) in the broader term, be tobacco-related.
 (24) A I don't believe so.
 (25) Q Okay. In terms of your counterparts in the

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(1) where folks came in from — and regional directors
 (2) came in from out of town.
 (3) Other than that, it depends on what you mean
 (4) by a meeting. You know, I've had some lunches
 (5) with the other tobacco industry lobbyists to talk
 (6) about day-to-day business, but —
 (7) Q I'll get to that in a minute. I'm looking more
 (8) for lobbyists from Oregon, California, Nevada,
 (9) Arizona, getting together at a location to talk
 (10) about common issues and themes.
 (11) A I did attend a state governmental affairs
 (12) conference sponsored by Philip Morris, for just
 (13) Philip Morris state lobbyists, in — it was
 (14) October or November of 1995, maybe even December.
 (15) I can't recall specifically.
 (16) Q Where was that held?
 (17) A In Richmond, Virginia.
 (18) Q Did you go out to the plant?
 (19) A Uh-huh. (Witness answers positively.)
 (20) Q How long was that conference?
 (21) A Two days, I believe.
 (22) Q Was there an agenda?
 (23) A I assume there was, yeah.
 (24) Q Was there a notebook with tabs on it?
 (25) A I can't recall.

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(1) Q Did you bring anything back from the meeting?
 (2) A As far as notes, notebooks, things like that,
 (3) probably if they were there, and I assume they
 (4) were.
 (5) Q Are those included in these documents that you
 (6) provided to us?
 (7) A I don't think so. I don't think so.
 (8) Q Where would those be?
 (9) A I have no idea. Not in my office. I assume that
 (10) I just didn't keep them.
 (11) Q When you search for documents that were requested
 (12) under the subpoena duces tecum, where did you
 (13) look?
 (14) A In my office.
 (15) Q Did you look at home?
 (16) A My office is in my home.
 (17) Q Do you have any other place where you might keep
 (18) documents; a storage facility, office in Olympia,
 (19) temporary space, something like that?
 (20) A No.
 (21) Q How about a law firm?
 (22) A No.
 (23) Q So you looked through everything you had, and the
 (24) result is what we have here?
 (25) A That's correct.

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(1) Q Plus, there is several documents that have been
 (2) designated as privileged, that we'll get into in a
 (3) little bit.
 (4) But were there any documents that you were
 (5) asked – that were responsive to the subpoena that
 (6) you did not produce –
 (7) A I –
 (8) Q – any confidential documents?
 (9) A I gave you every document that I have –
 (10) Q Okay.
 (11) A – to the best of my knowledge.
 (12) Q So in terms of whatever notes or binders,
 (13) notebooks you had from the meeting you attended in
 (14) October or November or December of 1995, you don't
 (15) know what happened to those notes or documents?
 (16) A That's correct.
 (17) Q What happened at the meeting?
 (18) A I'm trying to remember back a long time – well,
 (19) three years ago, anyway.
 (20) I arrived there one night and there was a
 (21) reception. The next day they took us out to the
 (22) cigarette plant. They had a presentation on how
 (23) cigarettes were made; it was a very lengthy
 (24) presentation. There was some presentation on the
 (25) current status of litigation in the companies.

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(1) That is essentially – there was a
 (2) presentation on taxes across the state, the
 (3) states, the subject states. That's about all I
 (4) recall.
 (5) We had a tour of the facility to see how
 (6) cigarettes were made.
 (7) Q What did they say about taxes out at Philip
 (8) Morris?
 (9) A All I really recall was looking up and seeing an
 (10) overhead and seeing Washington state marked with a
 (11) big asterisk, because we had the highest cigarette
 (12) tax in the nation at the time. And that's the
 (13) issue that was – that stuck out most clearly in
 (14) my mind.
 (15) Q Was there any discussion about the position you,
 (16) as the lobbyist for Philip Morris, should take out
 (17) here in the state of Washington with respect to
 (18) issues involving taxation of tobacco products?
 (19) A I don't recall that.
 (20) Q Was there a basic position that Philip Morris
 (21) wanted you to take on taxation of tobacco
 (22) products?
 (23) MR. BUTLER: A clarification.
 (24) Counsel, "You" meaning everybody there?
 (25) Your prior question dealt with specifically

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(1) meetings?
 (2) A Yes, I believe so.
 (3) Q Who were they?
 (4) A I don't recall their names.
 (5) Q Did they say anything?
 (6) A Again, there was an update on the current status
 (7) of various lawsuits and litigation status. I
 (8) believe that those were presented by attorneys.
 (9) Q Okay. Was there any discussion about potential
 (10) litigation against Philip Morris being filed in
 (11) Washington state?
 (12) A Not that I recall.
 (13) Q All right. Now, let's go to any other meetings
 (14) that you had besides the one you've been telling
 (15) me about in Richmond, Virginia, which was attended
 (16) by you, along with other lobbyists from other
 (17) states.
 (18) MR. BUTLER: Again, Philip
 (19) Morris lobbyists as opposed to lobbyists from
 (20) other companies?
 (21) Q (By Mr. Leedom) Any lobbyist now. I'm expanding
 (22) this.
 (23) MR. BUTLER: Oh, okay. Do you
 (24) have the question in mind, Mr. Ducharme?
 (25) Q (By Mr. Leedom) Is that clear?

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(1) A I think that's clear.
 (2) The only other meeting that I recall was a meeting, again sometime before the session in 1996, where the – my direct contact with Philip Morris, Tracey Scott was in town, she's a registered lobbyist in Washington state, I believe the regional director for the Tobacco Institute was in town. I don't know if he is a registered lobbyist or not, he participated in the meeting.
 (3) I don't remember the other folks specifically, other than the Washington lobbyists for the other members of the industry were in attendance. That was the only other meeting.
 (4) Q Where was that held?
 (5) A At the Marriott, Sea-Tac.
 (6) Q What was discussed at that meeting?
 (7) A The purpose was to establish an agenda for the upcoming legislative session.
 (8) Q Was that done?
 (9) A To some degree.
 (10) Q What was the agenda?
 (11) A Mostly – as I recall, most significantly focusing on the tax issue in Washington state.
 (12) Q What was the tax issue, as you put it?
 (13) A Well, at that point in time – and, you know, the

(1) A I think so.
 (2) Q And who does he work for?
 (3) A I think at the time, he worked for the Smokeless Tobacco Council. I think now he works for US Tobacco, but I'm not positive.
 (4) Q Anybody else?
 (5) A Not that I recall, but I assume there probably was.
 (6) Q Who was the person from the Tobacco Institute?
 (7) A Dan Howell.
 (8) Q Was he out of Washington, D.C.?
 (9) A You know, I don't know where Dan is located. I think he is in the western states someplace.
 (10) Q Anything else on the agenda for that meeting?
 (11) A Not that I recall, but I'm sure that there probably was. I just – I cannot remember, and I don't have a copy of it.
 (12) Q In the time period we're talking about, from roughly the fall of '95 until June of '96, can you think of any piece of legislation which proposed to increase taxes on tobacco products, that you supported on behalf of Philip Morris?
 (13) MR. BUTLER: Objection; assumes facts not in evidence.
 (14) Q (By Mr. Leedom) Go ahead.

(1) implementation of an increased cigarette excise tax in Washington took place well before my time. I believe it was in – well, over a course of several years, but a significant increase I think took place in 1993 and stepped up through '94 and '95 and '96, and subsequently resulting in Washington having the highest cigarette excise tax rate in the country.
 (2) And I recall that during that meeting, we were looking at where that tax – where those tax dollars were broken down and what different dedicated funds and what issues they went to fund, or sort of programs that they went to fund, if there was any sort of likelihood that we might be able to get a tax decrease in light of the current budget situation at that point in time in the state, and just to kind of look and discuss the feasibility of that issue.
 (3) Again, I had only been on board for a very short period of time, so a lot of this was just trying to catch up and trying to understand what was going on.
 (4) Q Did any of the money go to anti-tobacco programs?
 (5) A As far as in the dedicated accounts? I don't have specific knowledge of that.

(1) A I don't recall any piece of tobacco legislation that would have proposed to increase taxes, that was in existence at that time. So I guess my answer would be "no."
 (2) Q So during that session, you cannot think of any piece of legislation which proposed to increase – increase the taxes on tobacco products?
 (3) A I can't recall one, no.
 (4) Q Was there any piece of legislation, which you supported on behalf of Philip Morris, which proposed to decrease taxes on tobacco products in that time frame?
 (5) A Yes.
 (6) Q Tell me about those.
 (7) A There was one bill – I don't even know if it got a bill number, but it – and I'm just trying to reach back. But there was a bill that we had worked on that would have decreased tobacco taxes, and I can't remember by what amount. It was like five cents, and it was – it was triggered or it was geared – somehow related to Basic Health Care Plan enrollment, because I believe at the time there was a surplus in many of the dedicated accounts, to which some tobacco revenues go. And everybody at that time was looking for a tax

(1) There may be some of that in the – the youth violence reduction account, which there is – but I don't know what programs are exactly administered through that account.
 (2) I would say the water quality account probably doesn't have any input on that, or the Basic Health Care Plan or the health services account. I'm not sure if that does or does not.
 (3) The general fund may provide some funding for those types of programs.
 (4) Q All right. So at this meeting that was held at the Marriott, there was a discussion about the tax issue, and one of the discussion points was how the taxes on cigarettes could be decreased; is that correct?
 (5) A Yes.
 (6) Q Who attended this meeting besides you, Tracey, and the person from the Tobacco Institute you alluded to?
 (7) A I believe Bill Fritz was there, T.K. Bentler was there. I believe Berman Obaldia – Obaldia was there.
 (8) Q How do you spell that?
 (9) A The way it sounds, O-B-A-L-D-I-A. Obaldia.
 (10) Q His first name is Berman?

(1) decrease from tax increases that were implemented in '93; a whole host of folks, we lawyers included.
 (2) And it somehow had a trigger effect, and I can't recall it technically, but basically it said that if the Basic Health Care Plans remains at this lower enrollment level for three months – for a three-month period of time without fluctuating, then the tax decrease – or the tax on cigarettes will go down five cents, but if it increases over a certain point and sustains that increase for three consecutive months, then the tax would go back up.
 (3) So that's – that's what I recall, but it never got a hearing, so it was... (Pause.)
 (4) Q Could that possibly be Senate Bill 6745?
 (5) A I couldn't tell you.
 (6) Q Which proposed to limit taxes involved in the Basic Health Plan enrollment?
 (7) MR. BUTLER: Again, Counsel, I'll object to asking the witness questions – you obviously have a document in front of him you could show the witness to refresh his recollection. I think it's somewhat unfair to ask him to remember what I would consider completely

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(1) complex, specific details. If you can refresh his
 (2) recollection with a document, it might speed
 (3) things up.
 (4) **MR. LEEDOM:** Unfortunately, this
 (5) is my notes, my compilation of the various pieces
 (6) of legislation. And so I don't have it actually
 (7) in front of me.
 (8) Q (By Mr. Leedom) But I think we're talking on the
 (9) same wavelength, that you remember there was a
 (10) bill that would have limited – or reduced the
 (11) taxes on tobacco products?
 (12) A Until such time as it was appropriate to – to
 (13) reinstitute the tax.
 (14) Q And that didn't even get to the hearing stage?
 (15) A That's correct.
 (16) Q Okay. Do you remember that there was a proposed
 (17) bill that proposed to limit the packaging of
 (18) cigarette products to black-and-white packaging?
 (19) A I –
 (20) **MR. BUTLER:** Objection; assumes
 (21) facts not in evidence.
 (22) Q (By Mr. Leedom) Do you remember that?
 (23) A I do.
 (24) Q What position did you take on that?
 (25) A I took no position on that.

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(1) A I believe we did.
 (2) Q "We" being who?
 (3) A Other members of the tobacco industry lobby.
 (4) Q Who did you talk to?
 (5) A I can't recall specifically.
 (6) Q Can you recall anybody that you spoke to on the
 (7) subject?
 (8) A Well, I assume that I talked to Representative
 (9) Thomas, given there was a bill in his committee.
 (10) Specific – I might have spoke to Representative
 (11) Coster – you have to understand that in the
 (12) course of a day, you walk by and you see a whole
 (13) lot of people and you talk to them about a lot of
 (14) different issues affecting a lot of different
 (15) clients. So I don't – I kept no list and I can't
 (16) specifically tell you what members that I spoke
 (17) to.
 (18) Q With respect to the reduction of excise taxes
 (19) bill, did you tell Representative Thomas that you,
 (20) on behalf of Philip Morris, supported such a bill?
 (21) A I don't recall, but I assume that I would have.
 (22) Q What reasons did you give him for supporting it?
 (23) A Many of the same reasons that a lot of the other
 (24) people who had been taxed previously to a
 (25) significant degree were arguing. We had a surplus

(1) Q Do you know how far that got along in the process?
 (2) A As I recall, that was introduced in the 1995
 (3) legislative session. And as I recall, it never –
 (4) it never moved at all. It just – wherever it
 (5) was – wherever it wound up after the end of the
 (6) '95 session, it just remained there, I believe.
 (7) Q Do you remember a bill regarding the increasing of
 (8) penalties for selling to minors?
 (9) **MR. BUTLER:** Objection; assumes
 (10) facts not in evidence, lacks foundation.
 (11) A I don't recall specifically.
 (12) Bills have a lot of different component parts
 (13) to them, and so you're asking me about probably
 (14) something that existed in one component part of a
 (15) bill.
 (16) If you could show it to me, I could certainly
 (17) tell you whether or not I could remember it.
 (18) Q (By Mr. Leedom) Okay. In the time period we're
 (19) talking about, other than the bill that didn't
 (20) even get to committee, on decreasing the tobacco
 (21) tax, can you specifically recall any other pieces
 (22) of legislation relating to tobacco products?
 (23) A There was a bill introduced in – there was a bill
 (24) introduced that had a – essentially what it was
 (25) going to do was it was going to repeal a tax that

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(1) in the general fund, we had a surplus in many of
 (2) the accounts that – as I recall, that tobacco
 (3) revenues go into.
 (4) I believe that there was a Department of
 (5) Revenue study out at that point in time,
 (6) indicating that – that the increased cigarette
 (7) tax was having a direct impact on revenues derived
 (8) from cigarette taxes in Washington state, a
 (9) negative impact on it. And I think that I may
 (10) have mentioned that.
 (11) That's about what I recall; highest cigarette
 (12) tax in the nation.
 (13) Q Did you have a discussion with Representative
 (14) Thomas about the health care cost in the state of
 (15) Washington attributable to tobacco products?
 (16) A No.
 (17) Q Did you make any effort to find out what that
 (18) health care impact or cost was at that time?
 (19) A No.
 (20) Q Have you since?
 (21) A No.
 (22) Q If you are advocating lower taxes on the basis
 (23) that there was a negative impact on the State's
 (24) revenues by increasing taxes, why wouldn't you
 (25) research what the impact is on the state's health

(1) had not yet taken place, and it was the last-step
 (2) increase on tobacco taxes. And I believe it also
 (3) included beer, and it might have included
 (4) spirits – I'm not sure – because I think that
 (5) the beer tax was due to increase fairly
 (6) significantly at the – like in July of '96.
 (7) The cigarette tax had already taken a
 (8) substantial hike and it was only – it was only to
 (9) take another penny hike in July of '96. And I
 (10) think there was a bill that was introduced that
 (11) would have prevented those step increases.
 (12) Q Did you take a position with respect to that bill?
 (13) A I don't recall specifically lobbying. I – that
 (14) bill. I don't – I don't recall. It was a penny.
 (15) Q Are you saying that you don't recall talking to
 (16) any legislators about that particular bill?
 (17) A I may have spoken to one. I believe I spoke to
 (18) Representative Brian Thomas on that particular
 (19) bill, to ask him if he intended to hold a hearing
 (20) on it.
 (21) Q What did he say?
 (22) A He said, "No."
 (23) Q Did you talk to any legislators regarding the
 (24) reduction on tobacco taxes, on excise taxes for
 (25) tobacco products?

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(1) care cost by the increase in sales of tobacco
 (2) products?
 (3) **MR. BUTLER:** Objection;
 (4) unless – a couple points: First, I assume we're
 (5) limiting the question to the time period involved.
 (6) **MR. LEEDOM:** Yes, you are
 (7) correct.
 (8) **MR. BUTLER:** Secondly, I assume
 (9) that the question assumes facts not in evidence,
 (10) requires an improper hypothetical, asks for
 (11) speculation, and performs an improper linkage
 (12) between two irrelevant concepts and is, therefore,
 (13) vague and ambiguous.
 (14) Go ahead and answer.
 (15) A I don't know.
 (16) Q (By Mr. Leedom) Some of the documents you have in
 (17) here deal with the subject of elasticity. Are you
 (18) familiar with that?
 (19) A I'm familiar with the documents. The concept of
 (20) elasticity I'm little shaky on.
 (21) Q Are you familiar with the argument that if you
 (22) raise the price of a product, then the demand is
 (23) going to go down?
 (24) A Yes.
 (25) Q And isn't that what you're saying this Department

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(1) of Revenue report showed, that when the taxes went up, then the demand went down and, hence, the state got less revenue?

(4) **MR. BUTLER:** Objection; lacks foundation. The document speaks for itself. The witness has not been shown the document; therefore, it's calling for speculation, also beyond his competence and knowledge.

(9) **Q** (By Mr. Leedom) Go ahead.

(10) **A** It's my recollection that the study showed that the - the sales were still taking place and what they were taking place was across-border sales, casual smuggling, Indian reservation purchases and military base purchases, and so I'm not familiar with part of that study that talked about the decrease.

(17) **MR. BUTLER:** Your microphone fell off.

(19) **THE WITNESS:** Oops.

(20) **Q** (By Mr. Leedom) You mentioned the Department of Revenue report showing a negative impact if the taxes were increased. That would have been impact on revenues, right?

(24) **A** Yes, that's my understanding of the summary of the report.

(1) a fact not in evidence.

(2) Go ahead and answer.

(3) **A** I think that I did receive something. What, I can't recall. But there is a document, and I think it's in your stuff.

(6) **Q** (By Mr. Leedom) What do you think it talks about?

(7) **A** Well, maybe you can show it to me and I can -

(8) **Q** Well, no, no, no, if you can tell me what generally it's about, I might be able to find it when we get to the document part of this deposition.

(12) **A** I think what it essentially says is that the costs associated to society, the social cost of smoking, is something less than other statistics that have been out there. And I can't remember exactly what it is. Maybe it's - I can't remember what it is at all.

(18) **Q** But you didn't do any independent research yourself to find out whether it actually was higher or lower than the documents you received from Philip Morris?

(22) **A** No.

(23) **Q** Why didn't you do that? Why didn't you find out, by your own independent research, what the health care costs were of the use of tobacco products?

(1) **Q** The reason I'm asking this is because when Department of Revenue witnesses from the State were deposed, they were asked about this particular subject. And I wanted to know, did you actually see the report from the Department of Revenue?

(7) **MR. BUTLER:** Objection; requires the witness to assume facts in evidence regarding the depositions of other witnesses in this case; therefore, it deals with the time frame beyond the court's order.

(12) If your question is did he actually see a Department of Revenue study report during the time frame involved in this deposition, you can go ahead and answer.

(16) **A** Yes, I believe I did.

(17) **Q** (By Mr. Leedom) And what did you conclude from your reading of that report? What was the conclusion?

(20) **MR. BUTLER:** Objection; assumes facts not in evidence.

(22) **A** Well, assuming we're talking about the same report, the conclusion that I reached was that the state of Washington had a - had a sale or consumption of untaxed cigarette problem and that

(1) **A** I didn't feel that there was any need. Nobody ever asked me.

(3) **Q** Why didn't you feel there was a need to get the answer to that question if you're going to be advocating, for example, reduced taxes on tobacco products to the legislators?

(7) **MR. BUTLER:** Objection; assumes a fact not in evidence. Also - well, go ahead and answer.

(10) **A** I just never felt that there was a need. I didn't feel that that was my obligation.

(12) If I had been asked by a member of the legislature to provide information on that, I would have done my best to obtain that information, but certainly I'm not an expert in that particular regard and, you know, I don't know of what value conducting my own independent research would - would have been. But I never considered it.

(20) **Q** (By Mr. Leedom) Did you ever ask Philip Morris to document or back up the information they provided to you on the subject of the impact of taxes on revenues for a state?

(24) **A** How do you mean "back up"?

(25) **Q** Well, you told me that they gave you information

(1) they were determined to list about 25 percent of the total sale of cigarettes in the state of Washington, and so somewhere that there was a problem, that people were going to other sources to procure cigarettes, untaxed, and that there was a direct relationship between increasing taxes and people looking for other sources.

(8) **Q** (By Mr. Leedom) Did you conclude there was a direct relationship between lower taxes and increase in sales of tobacco products?

(11) **MR. BUTLER:** Objection; lacks competence, assumes facts not in evidence, calls for speculation.

(14) **A** I never considered that.

(15) **Q** (By Mr. Leedom) Did you ever discuss that with a legislator?

(17) **A** No.

(18) **Q** Did you ever discuss, with any legislator in this time frame, the impact of tobacco products on the cost of health care?

(21) **A** No.

(22) **Q** Were you ever provided, by Philip Morris, any information concerning the health care cost from the use of tobacco products?

(25) **MR. BUTLER:** Objection, assumes

(1) saying that the actual health care cost is lower than other information that was available, and I wondered if you ever asked Philip Morris to document or show the basis for their statement that it was in fact less.

(6) **A** First -

(7) **MR. BUTLER:** Excuse me, I'm going to object.

(9) The questions do not connect. The first question was does Philip Morris give them health - information about the health care costs of tobacco use. The next question was did Philip Morris ever back up the information on the relationship between cigarettes and - consumption and taxes.

(16) Those are separate issues. I don't know if you meant them to be connected or not. Counsel, but I'm going to object on the grounds that the questions are disconnected and, therefore, vague and ambiguous. And to -

(21) **Q** (By Mr. Leedom) Do you understand my question?

(22) Because if it is vague and ambiguous, I will rephrase it.

(24) **A** Please rephrase it.

(25) **Q** Okay. You told me earlier, I thought, that you

(1) got information from Philip Morris indicating that
 (2) the health care costs of tobacco products were
 (3) actually lower than some other publicly presented
 (4) data –
 (5) A If I can interrupt on that, I believe I – and if
 (6) I said I received it from Philip Morris, I
 (7) misspoke, because I don't recall the source of
 (8) that. I said I had a document. I believe that's
 (9) what I said.
 (10) Q Okay.
 (11) A That I have a document that I believe says in
 (12) summary what I provided to you, so... (Pause.)
 (13) Q Where did you get the document?
 (14) A I have no idea.
 (15) Q And it's not a Philip Morris document, as far as
 (16) you know?
 (17) A I don't know. If you show me the document, it
 (18) might have a fax number on it, it might have
 (19) something on it that I can try to trace down
 (20) the –
 (21) Q We'll get to that when we go through the
 (22) documents.
 (23) Now, during the time frame that you worked for
 (24) Philip Morris that we're inquiring about, prior to
 (25) the filing of the lawsuit, did you work with any

(1) the block, so I was more of a follower than a
 (2) leader. But at that point in time, it seemed to
 (3) be the focus on – on the tax issue, because
 (4) everybody was looking for tax decrease, from beer
 (5) to spirits to professional services, to HMOs, to
 (6) whoever. There was money to be had as a result of
 (7) a fairly significant tax increase post-1993, and
 (8) people were out there scrambling around trying to
 (9) get their piece of the pie back. And so that
 (10) seemed to be something of – of importance.
 (11) Again, if you wanted to take a look at the
 (12) bills, I know that I've provided, you know, some
 (13) reports of some bills in there. If you want to
 (14) talk about specifics relating to those, I'd be
 (15) happy to do that.
 (16) Just off the top of my head, I'm thinking that
 (17) that was the most important.
 (18) Q Were there any discussions that you had in this
 (19) group concerning the reduction of sales or use of
 (20) tobacco products by those under the age of 18?
 (21) A No.
 (22) Q Have you ever been a smoker yourself?
 (23) A Yes.
 (24) Q Tell me about that.
 (25) A I'm one of those kind of guys that if I go out and

(1) lawyers for Philip Morris?
 (2) A No.
 (3) Q Other than the meetings with the individual
 (4) lobbyists who you've identified, were there any
 (5) other meetings that we've not covered?
 (6) We talked about the Richmond meeting, the
 (7) Marriott Hotel meeting at the airport here in
 (8) Seattle. Any other meetings where you got
 (9) together and talked about issues relating to
 (10) legislation prior to June of '96?
 (11) A Not that I can recall, but that's not to say that
 (12) my client wasn't in town one day for lunch or
 (13) something like that. I just can't recall that
 (14) specific –
 (15) MR. BUTLER: I think Mr. Leedom
 (16) is also including in his questions any meetings
 (17) with other lobbyists from other companies, are you
 (18) not?
 (19) MR. LEEDOM: I'm going to get to
 (20) that next.
 (21) MR. BUTLER: Okay.
 (22) Q (By Mr. Leedom) In terms of Bill Fritz and
 (23) T.K. Bentler and the others you've identified
 (24) during this time frame, which is roughly six
 (25) months, did you also have periodic meetings with

(1) have a couple of beers and somebody is smoking a
 (2) cigarette, it sounds good to me and I might have
 (3) one or two.
 (4) Q When did you first start smoking the occasional
 (5) cigarette?
 (6) A Oh, gosh. You know, I had a cigarette in junior
 (7) high, and maybe one or two – oh, actually, no, I
 (8) smoked actually pretty steadily in high school,
 (9) stopped smoking in college, law school, smoked
 (10) occasionally. And since that time, it's been a
 (11) pretty sporadic type of a thing, I guess; like I
 (12) said, very – pretty infrequently, but every once
 (13) in a while one sounds good.
 (14) Q When you did smoke in junior high and high school,
 (15) I think you said, how much were you smoking a day
 (16) at that time?
 (17) A Boy, I can't recall, but I would say certainly
 (18) less than a pack. Maybe – I don't know, five to
 (19) ten, maybe.
 (20) Q Why did you stop during college?
 (21) A You know, I don't recall specifically.
 (22) Q And the occasional cigarette you have now would be
 (23) how many a week?
 (24) A There is weeks that go by that I never have one.
 (25) So if you put on average, maybe two.

(1) those individuals?
 (2) A Uh-huh. (Witness answers positively.) Yes.
 (3) Q Tell me about those meetings, how often.
 (4) First of all, did they take place?
 (5) A Yes, meetings do take place, the purpose for which
 (6) specifically relating to the tobacco industry; not
 (7) necessarily. We all represent different clients
 (8) and have some crossover issues. We would have
 (9) lunch on occasion. I can't tell you specifically.
 (10) There was no set date. We didn't – I don't
 (11) recall having a planned meeting, you know, like
 (12) some of my clients have.
 (13) Q Were there any regular meetings; for example, once
 (14) a month, you know, every Tuesday, you know, that
 (15) sort of thing?
 (16) A No, not that I recall.
 (17) Q Were there any agendas that were developed during
 (18) these meetings that were held on an irregular
 (19) basis?
 (20) A Not that I recall, no. I don't think so.
 (21) Q In this time frame, this six-month period of time,
 (22) what were the issues that the group of you
 (23) discussed when you would meet?
 (24) A As I recall, the big issue – and again, just as
 (25) background for you, I was kind of the new kid on

(1) Q Do you believe that you are addicted to
 (2) cigarettes?
 (3) A No.
 (4) Q Do you believe that people can become addicted to
 (5) cigarettes?
 (6) MR. BUTLER: Objection; it is irrelevant, not calculated to lead to the
 (7) discovery of relevant evidence, and beyond the
 (8) scope to the inquiry to the extent his personal
 (9) beliefs have never been communicated to lobbyists.
 (10) Q (By Mr. Leedom) Go ahead and answer.
 (11) A I don't know.
 (12) Q You don't know if people can become addicted?
 (13) A I don't know. It just depends on what you mean by
 (14) "addicted." You know, I don't know.
 (15) I personally don't feel like it's something
 (16) that I have to do, so I don't feel like – my
 (17) personal experience and my understanding of
 (18) addiction, which is very limited, but I don't feel
 (19) like I'm addicted to cigarettes, so I can just
 (20) only relate it to my personal experience.
 (21) Q Do you think that the use of tobacco products
 (22) causes lung cancer?
 (23) MR. BUTLER: Objection; his
 (24) personal beliefs are irrelevant and not calculated

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(1) to lead to the discovery of relevant evidence. To
 (2) the extent they have not been communicated to
 (3) lobbyists, it's beyond the scope of the court's
 (4) order.
 (5) But go ahead and answer.
 (6) A I don't know.
 (7) Q (By Mr. Leedom) You have no opinion at all about
 (8) that?
 (9) A I think that there is evidence that suggests that
 (10) that could be the case, but I'm not a doctor and I
 (11) don't know.
 (12) I think if you take at face value what you
 (13) read in the newspaper every day, the answer would
 (14) be probably "yes."
 (15) Q Have you ever communicated to a legislator that
 (16) you believe that cigarettes and other tobacco
 (17) products probably cause lung cancer?
 (18) A I don't believe so.
 (19) Q Let's take heart disease for a moment. Do you
 (20) believe that cigarette products and other tobacco
 (21) products cause heart disease?
 (22) MR. BUTLER: Same objection.
 (23) A My answer would be the same: I don't know, for
 (24) the same reasons as I described before.
 (25) Q (By Mr. Leedom) But do you believe the evidence

(1) supports that cigarettes and other tobacco
 (2) products probably do cause heart disease?
 (3) MR. BUTLER: Same objection; add
 (4) to it lack of competence, lack of foundation,
 (5) calls for speculation, beyond the witness's realm
 (6) of any expertise or even information.
 (7) Q (By Mr. Leedom) Go ahead and answer.
 (8) MR. WILSON: A further
 (9) objection: The term "evidence" that's used in
 (10) the question is vague and overly broad.
 (11) MR. BUTLER: Go ahead and
 (12) answer.
 (13) A I don't know. I just - you know, I have not
 (14) reviewed any studies or - you know, beyond what
 (15) you read in the newspaper every day. I just don't
 (16) have - I don't know - the experience, the
 (17) knowledge, the background.
 (18) Q (By Mr. Leedom) Have you ever read any portion of
 (19) any Surgeon General's report?
 (20) A I can't recall. I probably have.
 (21) Q Have you ever communicated to a legislator that
 (22) you believe that cigarettes or other tobacco
 (23) products can cause heart disease?
 (24) MR. BUTLER: Objection; assumes
 (25) facts not in evidence, misstates the witness's

(1) testimony. He never said that he believed it can
 (2) cause heart disease. He says he doesn't know.
 (3) MR. LEEDOM: I realize that.
 (4) I'm asking him whether he ever told any legislator
 (5) that cigarettes or other tobacco products can
 (6) cause heart disease.
 (7) MR. BUTLER: That's a different
 (8) question.
 (9) A Not that I recall.
 (10) Q (By Mr. Leedom) Let's talk about emphysema for a
 (11) minute.
 (12) Do you know what emphysema is?
 (13) A Not specifically.
 (14) Q Have you ever known anybody who has had emphysema?
 (15) A Not directly, that I can recall.
 (16) Q Do you believe that cigarettes and other tobacco
 (17) products cause emphysema?
 (18) MR. BUTLER: Repeat my prior
 (19) objections, all of them. And we can probably
 (20) do -
 (21) MR. LEEDOM: You don't have to
 (22) repeat them.
 (23) MR. BUTLER: Thank you.
 (24) A I don't know.
 (25) Q (By Mr. Leedom) Have you ever told any legislator

(1) that you believe that tobacco products or
 (2) cigarettes specifically cause emphysema?
 (3) MR. BUTLER: Assumes facts not
 (4) in evidence.
 (5) A No.
 (6) Q (By Mr. Leedom) Ever done any independent
 (7) research on the role played by tobacco products in
 (8) lung cancer, heart disease, or emphysema?
 (9) A No.
 (10) Q Has any of your family members, immediate family
 (11) members, had cancer?
 (12) A No.
 (13) Q You told me earlier that one of your jobs as a
 (14) contract lobbyist for Philip Morris was to advise
 (15) them of what was happening on the legislative
 (16) front in the state of Washington.
 (17) During the period of the fall of '95 through
 (18) June of '96, what information did you convey to
 (19) Philip Morris on what was happening on the
 (20) legislative front?
 (21) A That's a pretty broad question.
 (22) Q I realize that.
 (23) A You know, at any given time, particularly in the
 (24) second year of a two-year cycle, you've got close
 (25) to 5,000 bills in the process. I have a number of

(1) clients that I represent, so specifically, I can't
 (2) tell you exactly.
 (3) I did provide to them a weekly report, which I
 (4) provided to you. And I'd be happy to see if we
 (5) couldn't more closely narrow down what you're
 (6) asking for.
 (7) Q Okay. For example, did the issue of a bill which
 (8) would impose liability on tobacco companies for
 (9) injuries and damages caused to smokers come up
 (10) during this six-month time frame we're talking
 (11) about?
 (12) MR. BUTLER: Objection, and the
 (13) witness has indicated that he would be happy to
 (14) refresh his recollection from his weekly report
 (15) documents, which have been provided to you. I
 (16) think it's unfair to ask him, as he has indicated,
 (17) to remember one amongst what was, by his own
 (18) account, over 5,000 pending pieces of legislation.
 (19) So I'll object on requires speculation and calls
 (20) for - lacks foundation.
 (21) But you can go ahead and answer if you can.
 (22) A I don't recall such a bill, but if there was,
 (23) perhaps you can show it to me and that might jog
 (24) my memory.
 (25) THE WITNESS: Do you suppose we

(1) can take five minutes? I'm about ready to shlog
 (2) out here and float away with all the water that
 (3) I've had.
 (4) MR. LEEDOM: Sure, let's take
 (5) five.
 (6) THE VIDEOGRAPHER: We are going
 (7) off the record at 2:42.
 (8) (Recess at 2:42 p.m.)
 (9)
 (10) THE VIDEOGRAPHER: We are back
 (11) on the record at 2:51.
 (12)
 (13)
 (14) EXAMINATION (Continuing)
 (15) BY MR. LEEDOM:
 (16) Q All right. Let me ask you some more general
 (17) questions.
 (18) In terms of strategy for the 1996 session, how
 (19) did you determine what the strategy of Philip
 (20) Morris was going to be with respect to legislation
 (21) impacting Philip Morris?
 (22) MR. BUTLER: I'll object.
 (23) Assumes facts not in evidence.
 (24) Go ahead and answer.
 (25) A Legislation of -- I suppose you look at an

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(1) individual piece of legislation and what – and
 (2) you assess its potential impact and then you get a
 (3) position from the client and then you implement a
 (4) strategy. But as a general approach, I mean, I
 (5) think that's too broad of a question to be able to
 (6) really specifically answer.

(7) Q (By Mr. Leedom) Well, I was looking at that
 (8) specific time frame, though, in the 1996 session.
 (9) And presumably there were bills that you reviewed
 (10) and you reported to Philip Morris might have an
 (11) impact on them, or they let you know it might have
 (12) an impact. And I wanted to know how you developed
 (13) a strategy with them on any particular bill, other
 (14) than the tax bill that you already told me about.

(15) MR. BUTLER: I'll object that

(16) the question assumes a fact not in evidence.

(17) A I can really answer your question a lot better if
 (18) you identify specific bills, because once again,
 (19) you know, there were a number of bills on reports,
 (20) and if a bill apparently wasn't going anywhere
 (21) because it had not moved since the prior year's
 (22) introduction, then it wasn't something we really
 (23) sat down and implemented a strategy on because
 (24) there was no reason for that.

(25) Q (By Mr. Leedom) As you sit here today, other than

(1) state of Washington, correct?
 (2) A It just depends on what your definition of
 (3) low-income is. I think that some people would beg
 (4) to differ with that, but again, I haven't
 (5) researched it closely enough to develop an opinion
 (6) on that.

(7) Q And you knew that by decreasing the tax on
 (8) cigarettes, it would decrease the amount of
 (9) available funds for this program?

(10) MR. BUTLER: Objection; assumes
 (11) facts not in evidence.

(12) Q (By Mr. Leedom) Did you know that?

(13) A It was my understanding there was a surplus, so it
 (14) wasn't taking away from anybody, until such time
 (15) as enrollment dictated that more funds became
 (16) available.

(17) Q I think we're talking about apples and oranges.
 (18) There may be a surplus in the bank, we'll
 (19) agree with that. My question is: You understood
 (20) that by reducing the taxes on cigarettes
 (21) necessarily, the funds coming into that pool of
 (22) money would be reduced?

(23) A Yes, just as they would be reduced for reducing
 (24) your service – your B&O tax on services that you
 (25) provide to your clients, for the beer people who

(1) the tax bill, can you remember any bill that
 (2) impacted, under your evaluation, Philip Morris.
 (3) that you had to develop a strategy for?

(4) A If you want to show me my report, I could
 (5) certainly take a look through there and –

(6) Q Well, without looking at the report, can you
 (7) answer that question?

(8) A I don't believe that – that there was anything so
 (9) significant that we sat down and looked at a
 (10) particular strategy on.

(11) Q Other than the tax issue?

(12) A Correct.

(13) Q Okay. And on the tax issue, did you strategize
 (14) with representatives of the other tobacco

(15) companies?

(16) A Yes.

(17) Q What was your strategy that you determined to
 (18) follow with respect to the tax issue?

(19) A I think it was the same – specifically I can't
 (20) recall. We didn't write down a particular
 (21) strategy or a game plan, but I think that, you
 (22) know, as a – the bill that was drafted looked at
 (23) some issues of – oh, I don't know. We didn't
 (24) want to be perceived as taken away – the Basic
 (25) Health Care Plan is, at least my understanding or

(1) provide – you know, beer, HMOs, whoever. Same
 (2) people, same issues, same effect.

(3) MR. LEEDOM: Move to strike as
 (4) nonresponsive after the word "yes."

(5) Q (By Mr. Leedom) Now, the trigger – there was, in
 (6) fact, a trigger amendment that you proposed, was
 (7) there not?

(8) A I can't recall if the trigger was in the bill
 (9) itself or there was a trigger amendment. I don't
 (10) have a copy of the trigger amendment, I know, so I
 (11) couldn't tell you if it was in the bill itself or
 (12) whether it was an amendment.

(13) Q Okay. In this time period we're discussing, were
 (14) you ever asked to be a witness at a hearing –

(15) A No.

(16) Q – concerning any of the tax bill or any other
 (17) bill?

(18) A No.

(19) Q Were you ever asked to provide a witness?

(20) A No.

(21) Q Did you ever provide a witness?

(22) A No.

(23) Q Did you consult at all with any economists or
 (24) other experts in finance concerning the impact
 (25) that you were taking on the tax bill?

(1) what my belief is, perceived as something that's
 (2) been a somewhat successful program, that there is
 (3) a large interest in making sure that it continues
 (4) to exist. And it wasn't our strategy to somehow
 (5) jeopardize that. That's why we had a trigger
 (6) mechanism to it. So that it wouldn't be taking
 (7) away from something.

(8) So I think that we wanted to convey the
 (9) message that we weren't taking away for – away
 (10) from something; we were just – we were taking
 (11) from it until it needed it.

(12) We weren't taking from it. We didn't need it;

(13) It had an excuse, it had a surplus in it. So
 (14) until such time as enrollments dictated a

(15) necessity for increased funds, then –

(16) Q Who were the enrollees in this health care plan?

(17) A I don't know.

(18) Q You didn't research that?

(19) A I looked at the numbers, but I don't remember what
 (20) the qualifications were for that at that point in
 (21) time. It's changed from time to time, a certain
 (22) percentage of the poverty level, but I couldn't
 (23) tell you what it is at this point in time or what
 (24) their enrollment projections were back then.

(25) Q It's safe to say it was low-income people in the

(1) A Not personally.

(2) Q Did somebody else?

(3) A I think that we've got – I think that I have in
 (4) my files some information that probably relates to
 (5) that subject, but I couldn't tell you where it
 (6) came from or what it says.

(7) Q Have you ever discussed in this time frame, with
 (8) any legislator, the health risk associated with
 (9) smoking or other tobacco products?

(10) A No. Never been asked.

(11) Q Never volunteered any information?

(12) A No. Never came up.

(13) Q Were you ever asked by a legislator or a member of
 (14) a legislator's staff or a committee staff for any
 (15) information concerning the health risks associated
 (16) with smoking or the use of tobacco products?

(17) A No.

(18) Q During that period from '95 through '96, what was
 (19) the position of Philip Morris with respect to the
 (20) use of tobacco products by minors?

(21) A Their position was that they wanted to discourage
 (22) and to not promote in any way the use of
 (23) underage – or – underage smoking.

(24) Q How did you learn that position?

(25) A I was provided information regarding programs that

(1) either Philip Morris had independently implemented
 (2) or in conjunction with other industry members or
 (3) the Tobacco Institute. For example, they had a
 (4) "we card" program, they had an action against
 (5) access program. I believe I've provided you
 (6) documentation on those.
 (7) There was another program, I can't recall
 (8) exactly, but it was similar to the "we card" or
 (9) "don't ask," or "If you don't have an ID, don't
 (10) ask" kind of a program.
 (11) Philip Morris, in its own capacity, was trying
 (12) to establish a relationship with the Liquor
 (13) Control Board to determine what retail
 (14) establishments had been cited for underage sales.
 (15) And it was Philip Morris's intent, upon being –
 (16) as far as I understand from the company
 (17) correspondence I read, to take away shelving or
 (18) marketing incentives, and I don't know what those
 (19) specifically are or were, to merchants who sell
 (20) their products who had been cited by the Liquor
 (21) Control Board.
 (22) Q Did you receive this position statement in
 (23) written form from Philip Morris, concerning the
 (24) discouragement of underage smoking?
 (25) A I believe somewhere in – I believe there is a

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(1) exist which – in which Philip Morris encouraged
 (2) and promoted underage smoking, that would be
 (3) directly contrary to the position that they had
 (4) you advocate to the legislature in the time frame
 (5) we're discussing; is that correct?
 (6) MR. BUTLER: Objection; assumes
 (7) facts not in evidence, improper, and speculative
 (8) hypothetical, vague and ambiguous, requires
 (9) introduction of facts not in evidence, calls for
 (10) speculation.
 (11) You may go ahead and answer if you can.
 (12) A I'm sorry, I got lost.
 (13) Q (By Mr. Leedom) I'm going to have her read that
 (14) question to you.
 (15) MR. LEEDOM: And you can have
 (16) your objection after the re-read.
 (17) MR. BUTLER: Thank you.
 (18) (Question on Pages 85-86.
 (19) Lines 25 through 5, read
 (20) by the reporter.)
 (21)
 (22) A Yes.
 (23) Q (By Mr. Leedom) And I gather, from what you've
 (24) told me already today, that you at no time told
 (25) any legislator or committee member that Philip

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(1) policy statement, and I'm sure it's in your
 (2) documents, that would indicate that that's the
 (3) case.
 (4) Q Do you know how long, prior to your six-month
 (5) period that we're talking about, that Philip
 (6) Morris took the position that they were
 (7) discouraging and not promoting in any way underage
 (8) smoking?
 (9) A No.
 (10) Q Have you ever seen any internal documents from
 (11) Philip Morris on the subject of promoting underage
 (12) smoking?
 (13) A No.
 (14) Q Did you ever ask to see any of them?
 (15) A No.
 (16) Q Even to the present date?
 (17) MR. BUTLER: Objection; twofold:
 (18) First, assumes facts not in evidence, i.e., that
 (19) there are such documents, and second, as to the
 (20) last question, it goes beyond the scope of the
 (21) inquiry.
 (22) Q (By Mr. Leedom) Mr. Ducharme, are you telling me
 (23) that even to the present date, you have not been
 (24) provided with any documents which indicate
 (25) directly that Philip Morris, in fact, encouraged

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(1) Morris encouraged or promoted underage smoking?
 (2) A At no –
 (3) MR. BUTLER: Objection; assumes
 (4) facts not in evidence.
 (5) A At no time did I ever make any sort of
 (6) representation to that effect.
 (7) Q (By Mr. Leedom) Thank you.
 (8) If you knew that Philip Morris, in fact, did
 (9) encourage and promoted underage smoking during
 (10) that time frame, would you have continued to have
 (11) worked for them as a contract lobbyist?
 (12) MR. BUTLER: Objection; assumes
 (13) facts not in evidence, completely speculative,
 (14) argumentative in the extreme, vague as to both
 (15) time frames, and – I think that's sufficient.
 (16) A I don't know. I was never faced with that
 (17) situation.
 (18) Q (By Mr. Leedom) Do you recall, during the time
 (19) frame we're discussing, there being any bills
 (20) which would have restricted access to cigarettes
 (21) or tobacco products by minors?
 (22) A I'm – you know, I'm sure there probably was
 (23) something along those lines.
 (24) Q Do you recall that Philip Morris took a position
 (25) contrary to a bill, any bill, in that time frame.

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(1) and promoted underage smoking?
 (2) MR. BUTLER: Well, objection.
 (3) First of all, objection on the grounds that it
 (4) assumes facts not in evidence and it goes beyond
 (5) the scope of the court's order. And since it goes
 (6) beyond the scope of the court's order, I'll
 (7) instruct the witness to answer, except as to time
 (8) period up to the filing of the complaint.
 (9) A Could you restate that one more time? I'm not
 (10) sure whether a "yes or a "no" might be –
 (11) MR. BUTLER: I'm instructing you
 (12) not to answer as to the time after the filing of
 (13) the complaint.
 (14) Q (By Mr. Leedom) My question was: Up until June
 (15) of 1996, are you telling me that you have never
 (16) been provided with any document which indicates
 (17) that, in fact, Philip Morris encouraged and
 (18) promoted underage smoking?
 (19) MR. BUTLER: And I'll object on
 (20) the grounds that it assumes such a document
 (21) exists.
 (22) You may answer.
 (23) A To the best of my knowledge, yes, that's what I'm
 (24) telling you.
 (25) Q (By Mr. Leedom) So if, in fact, such documents do

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(1) which would have restricted cigarette access by
 (2) minors?
 (3) MR. BUTLER: Objection; vague
 (4) and ambiguous, does assume facts not in evidence,
 (5) lacks foundation, calls for speculation.
 (6) Go ahead.
 (7) A I would sure feel more comfortable if we could
 (8) just not reference a bill, any bill, and look at
 (9) specific bills, because then I could really give
 (10) you an answer as to whether – you know, what
 (11) activity, if any, took place in that particular
 (12) regard.
 (13) I don't – I've lost the question.
 (14) I don't believe that Philip Morris, on behalf
 (15) of Philip Morris, there was opposition – I would
 (16) have to see. I have to see.
 (17) I don't believe, off the top of my head, that
 (18) there was any such opposition, but we have to get
 (19) into specifics of bills, what we mean about
 (20) restrictive access. I mean, I just – I just
 (21) don't know.
 (22) Q (By Mr. Leedom) Do you remember any bills in that
 (23) time frame that related to penalties imposed upon
 (24) sellers of tobacco products to minors?
 (25) A Again, if we could look at a specific bill, it

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(1) would be helpful, I think that there was a bill
 (2) that had a sampling component in it, and I took no
 (3) position on that bill and did not lobby it one way
 (4) or the other. I was instructed specifically to
 (5) not lobby that bill, as we were not samplers and
 (6) we do not sample or coupon or put tobacco products
 (7) in the mail.
 (8) Q What's the position of Philip Morris with respect
 (9) to vending machines, in the time frame we're
 (10) discussing?
 (11) MR. BUTLER: Objection; vague
 (12) and ambiguous as to context.
 (13) But go ahead.
 (14) A I don't specifically recall. There's probably
 (15) something in a policy manual that was provided to
 (16) you.
 (17) I believe that vending machines in the state
 (18) of Washington are unlawful in any place that could
 (19) be accessed by persons under the age of 21, so
 (20) that's - I don't know if it ever was an issue.
 (21) Q (By Mr. Leedom) Well, do you know whether or not
 (22) Philip Morris actually took a position contrary to
 (23) that legislation, prior to your tenure?
 (24) A I don't know.
 (25) Q You said Philip Morris doesn't do sampling.

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(1) products is hazardous to a person's health.
 (2) Q Do you believe that the use of tobacco products is
 (3) hazardous to a person's health?
 (4) MR. BUTLER: Objection; asked
 (5) and answered.
 (6) Go ahead.
 (7) A I don't know.
 (8) Q (By Mr. Leedom) You don't know?
 (9) I didn't ask you if you knew. I asked you if
 (10) you believed.
 (11) MR. BUTLER: Then I'll object as
 (12) being irrelevant and not calculated to lead to the
 (13) discovery of relevant evidence.
 (14) It's already been covered in the fact that
 (15) he's never discussed his beliefs regarding health
 (16) with any legislators, which is within the scope of
 (17) the inquiry of this deposition.
 (18) Q (By Mr. Leedom) Go ahead.
 (19) A I think it could be.
 (20) Q So you think tobacco products could be hazardous
 (21) to a user's health; is that right?
 (22) A Could potentially.
 (23) MR. BUTLER: Same objections.
 (24) Q (By Mr. Leedom) And why do you say that?
 (25) MR. BUTLER: Same objections.

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(1) doesn't do coupons. Do you know why not?
 (2) A No.
 (3) Q With respect to the - let's call it anti-tobacco
 (4) forces in the state of Washington, who would be
 (5) your principal foils or opponents on the
 (6) anti-tobacco front?
 (7) A I don't consider that we have a principal opponent
 (8) or entity on the anti-tobacco front. I don't have
 (9) an opponent or somebody until I see a piece of
 (10) legislation moving that - that my company would
 (11) not support, and then I would have to identify the
 (12) proponent of that, and then I suppose that would
 (13) be the principal opponent at that time.
 (14) Q What about the American Lung Association?
 (15) A Yeah, I suppose you could - I suppose I could
 (16) consider them an opponent, because I, you know,
 (17) suspect that their interests are most closely
 (18) concerned with putting my client out of business.
 (19) Q Have you had to square off against them in any -
 (20) with respect to any piece of legislation?
 (21) MR. BUTLER: I'm assuming we're
 (22) in the same time frame?
 (23) MR. LEEDOM: Yeah.
 (24) MR. BUTLER: And then I'll
 (25) object as vague and ambiguous as to "any piece of

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(1) A I don't have any direct knowledge. I'm not a
 (2) medical doctor, you know, I read the newspapers
 (3) every day just like you do, and there is a - you
 (4) know, a large contingent of folks out there and
 (5) people in the medical community that indicate that
 (6) such is the case. I can't refute that
 (7) specifically. I don't know.
 (8) Q (By Mr. Leedom) Do you have children?
 (9) A Yes, I do.
 (10) Q How old are they?
 (11) A Nine months and four years.
 (12) Q Have you ever had a discussion with your
 (13) four-year-old about tobacco products?
 (14) MR. BUTLER: Object; it's
 (15) irrelevant, not calculated to lead to the
 (16) discovery of relevant evidence, it's way outside
 (17) the scope of the court's order of inquiry.
 (18) Go ahead and answer.
 (19) A Yes.
 (20) Q (By Mr. Leedom) What did you tell him or her?
 (21) A I told him that it probably wasn't good for him to
 (22) smoke.
 (23) Q Did you tell him why?
 (24) A No.
 (25) Q What else did you say to him?

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(1) legislation."
 (2) Go ahead.
 (3) A I'm sure - I think I have a document in there.
 (4) I'm sure that they opposed, you know, any
 (5) effort on the part of the industry to reduce the
 (6) tobacco tax. So in that regard, I suppose that we
 (7) were on opposing sides of that issue.
 (8) Q (By Mr. Leedom) What about the American Heart
 (9) Association?
 (10) A I think that that pretty much goes - I think
 (11) they're pretty much similar to the Lung
 (12) Association in that regard.
 (13) Q What about Tobacco Free Washington?
 (14) A I suppose they're in there, as well. I would - I
 (15) would assume that we would be on different sides
 (16) of, again, the tax issue.
 (17) Q Did you say that you think they want to put your
 (18) company out of business?
 (19) A I think that if they had their way, it would be
 (20) fairly obvious that they would just as soon that
 (21) people didn't smoke anymore. So in that regard,
 (22) probably yes.
 (23) Q Why do you think they don't want people to smoke
 (24) anymore?
 (25) A I think that they advocate that use of tobacco

(1) A I just think that we said it wasn't good for him.
 (2) Q "We," you and your wife?
 (3) A Uh-huh. (Witness answers positively.)
 (4) Q Did you ever tell any legislator or staff person
 (5) for a legislator that you believe that tobacco
 (6) products could be hazardous to a person's health
 (7) if they use those products?
 (8) A Nope.
 (9) Q And why didn't you tell them that?
 (10) A It never came up, quite frankly. Nobody has ever
 (11) asked me what my opinion is in that regard. And
 (12) it's my personal belief that everybody has an
 (13) opinion in that regard and that's why they don't
 (14) ask the question.
 (15) Q Why didn't you volunteer your belief?
 (16) You volunteered your belief on whether or not
 (17) you thought taxes were - should be increased or
 (18) decreased on tobacco products, didn't you?
 (19) A Yes, I did.
 (20) Q So why didn't you tell them what you thought about
 (21) whether or not these products could be hazardous?
 (22) A It wasn't relevant to an issue that I was
 (23) supporting on behalf of the client.
 (24) Q Why wouldn't it be relevant?
 (25) A Because it doesn't have anything to do with the

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(1) tax issue or – ostensibly, and it wasn't information that I was directed to provide to the legislature and it's not information that I was requested to provide to the legislature.
 (2) Therefore, in my mind, it wasn't relevant.
 (3) I could provide all sorts of information to people not specifically relating to interests of my clients or requests made of me, and I wouldn't have time to do the business that I need to do.
 (4) Q So as a lobbyist, is it your view that unless you're directed by your client to provide information to a legislator, you don't do so?
 (5) MR. BUTLER: Objection; misstates the witness's testimony.
 (6) Q (By Mr. Leedom) I'm trying to understand what you're saying.
 (7) MR. BUTLER: Well, ask the whole question again. There is two parts to that answer.
 (8) Q (By Mr. Leedom) Can you answer my question? I'll repeat it.
 (9) A I'm confused.
 (10) Q I'm sorry.
 (11) My question is: Is it your position as a lobbyist that unless you're directed by your

(1) to cigarette products to a legislator.
 (2) Now, hypothetically speaking, would you tell the legislator that you, in fact, knew that tobacco products caused lung cancer?
 (3) MR. BUTLER: Objection; it's beyond the scope of the court's inquiry, it assumes facts not in evidence, it's argumentative, lacks foundation, calls for speculation.
 (4) MR. WILSON: It's compound.
 (5) MR. BUTLER: And it's compound, yes. And also beyond the witness's competence, and misstates the witness's prior testimony, as well. Yes.
 (6) Okay, that I think covers it.
 (7) A So if – hypothetically –
 (8) Q (By Mr. Leedom) Hypothetically.
 (9) A – if I were pursuing legislation – or if I was opposing legislation that would – that would prevent youth access, so, therefore, promoting youth access to tobacco products? Is that where you're at?
 (10) Q Yes.
 (11) A And if I were opposing such legislation and I knew for a fact, for a certainty, that use of tobacco products caused –

(1) client, your principal, to reveal information, you don't do so?
 (2) MR. BUTLER: Objection; misstates the witness's prior testimony.
 (3) A It's not my – that's not my position. I provide information relevant to issues of concern to my client to legislators.
 (4) The information you were speaking of is information that I have not ever provided to legislators because I've never been asked to provide it. That doesn't mean that on occasion there isn't other – you know, it's – it's hard to answer your question specifically, but I guess the answer is, no, there – you know, there is times I'm asked to provide information as to what would the – you know, who is opposing this measure that you would like to see passed. And you can, to the best of your ability, say, "Well, these groups out here are going to oppose this" and for what reason, and you can give them that response.
 (5) For obvious reasons there are a number of interests that will argue against pieces of legislation that Philip Morris may be for or would like to see pursued or passed or they would like

(1) Q Lung cancer.
 (2) A – lung cancer, would I withhold that information or would I –
 (3) Q Would you reveal that information?
 (4) A Would I reveal that information?
 (5) Q That's the question.
 (6) MR. BUTLER: Same objections.
 (7) Q (By Mr. Leedom) Okay. What's your answer?
 (8) A I don't know.
 (9) Q Let's go to a couple of these – some of these documents.
 (10) And just for the record, you're telling us that the documents that you've produced here through your attorneys are all of the documents that you have or had in your possession; is that correct?
 (11) A That is correct.
 (12) Q First of all, there is a privilege log.
 (13) Did you see the privilege log? There are several documents listed on the privilege log.
 (14) A No, I did not.
 (15) Q There is a document, looks like 0689, a memo by Bill Fritz, you are one of the recipients, April of '96, summarizing legal advice to Washington State Association of Neighborhood Stores case.

(1) to oppose. And there is going to be an opposition to that just to provide information.
 (2) So I have just not felt that – you know, I felt that I provided accurate and honest information as to my company's position.
 (3) Q (By Mr. Leedom) But did you provide complete information with respect to information you have concerning the product your client sells; that is, tobacco products?
 (4) MR. BUTLER: Objection; I think it assumes facts not in evidence and I think it's also quite argumentative, and also misstates the witness's prior testimony.
 (5) Q (By Mr. Leedom) Go ahead.
 (6) A You know, I don't know what you mean by "complete information," again. At some point in time, you know, you can – you know, you can spend the rest of your life providing information on one particular topic.
 (7) I think that I provide the information that's provided to me.
 (8) Q Well, let me ask you to assume that you believed – in fact, knew that cigarettes caused lung cancer. All right? And you were advocating a position on a bill relating to the youth access

(1) Let me show you the – it's the top one there.
 (2) MR. WILSON: Excuse me, Bill, do you have a copy of that so I can read along with you?
 (3) MR. LEEDOM: No, I don't.
 (4) That's why I tried to read it out so you'll know exactly what it is.
 (5) MR. WILSON: I was unable to keep up with the numbers you were –
 (6) MR. LEEDOM: 689.
 (7) MR. BUTLER: It has been the custom, Mr. Leedom, in depositions when we have exhibits or documents to show the witnesses, that we have copies to provide to counsel, at least to the counsel defending the deposition, so we don't have to try to read over the witness's shoulder and impinge on the camera. It would be lovely if that could be provided here today.
 (8) MR. LEEDOM: Well, we'll try to do that after the break.
 (9) MR. BUTLER: That would be lovely.
 (10) Q (By Mr. Leedom) Now, with respect to this, do you recall that document?
 (11) I have not seen it, so it's only identified

(1) here. So tell me if you recall such a document.
 (2) A Not really, no.
 (3) MR. LEEDOM: And I guess I'll
 (4) just, on the record, ask Mr. Butler how we can
 (5) have an attorney/client privilege when it's coming
 (6) from Bill Fritz, who is not an attorney, and a
 (7) lobbyist for the Tobacco Institute, to, among
 (8) others, Mr. Ducharme, who is a lawyer, though he
 (9) is acting in a capacity as a lobbyist. How could
 (10) it possibly be attorney/client privilege?
 (11) MR. BUTLER: If you would like
 (12) to have a discussion of privilege issues, you can
 (13) take it up outside the context of this deposition.
 (14) We have a good faith basis for declaring that
 (15) a privilege document, and we can deal with it
 (16) outside the context of the deposition if you want
 (17) to make separate inquiry.
 (18) I won't allow the witness, obviously, to
 (19) discuss the documents.
 (20) MR. LEEDOM: Well, he doesn't
 (21) even know what it is, I gather, from what I've
 (22) just learned from him.
 (23) Q (By Mr. Leedom) The next one is No. 690. It's
 (24) invoices for legal services from the Heller Ehrman
 (25) firm.

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(1) 3:36.
 (2) (Exhibit No. 1235 marked
 (3) for identification.)
 (4)
 (5)
 (6) EXAMINATION (Continuing)
 (7) BY MR. LEEDOM:
 (8) Q Mr. Ducharme, showing you Exhibit 1235, which is a
 (9) privilege log, I've been asking you about certain
 (10) of the documents listed on that log.
 (11) MR. LEEDOM: I believe everybody
 (12) has a copy now.
 (13) Q (By Mr. Leedom) I want to ask you specifically
 (14) about Item No. 4, the memo from Tina Walls.
 (15) Do you see that?
 (16) A Uh-huh. (Witness answers positively.)
 (17) Q Tina Walls is not a lawyer; is that correct?
 (18) A I don't know.
 (19) Q You are not listed as a recipient of the document;
 (20) is that correct?
 (21) A Yes, that's correct.
 (22) Q But you did receive a copy of the document?
 (23) A Apparently so, as it appears that it came out of
 (24) the documents that I provided.
 (25) Q Now, we have several recipients. One is a

(1) Have you ever seen such invoices?
 (2) A If they were in the pile of stuff that I gave to
 (3) you guys, I've seen it. But do I recall it or do
 (4) I know what it is about? No.
 (5) Q And how is it that you would receive invoices for
 (6) legal services in the Neighborhood Stores case
 (7) from the Heller Ehrman law firm?
 (8) MR. BUTLER: Objection; instruct
 (9) the witness not to answer, impinges on the grounds
 (10) of privilege.
 (11) MR. LEEDOM: Oh, instruct not to
 (12) answer. Sorry.
 (13) MR. BUTLER: Quite all right.
 (14) Q (By Mr. Leedom) And then there is a letter -
 (15) MR. LEEDOM: This is, John,
 (16) Page 691 -
 (17) MR. WILSON: Is that a document
 (18) identification number?
 (19) MR. LEEDOM: Yes, his are all
 (20) numbered.
 (21) Q (By Mr. Leedom) And it's from a Daniel Zariski,
 (22) looks like Z-E-R-I-S-K-I -
 (23) MR. BUTLER: Z-A-R-I-S-K-I,
 (24) actually.
 (25) MR. LEEDOM: It's a typo, then.

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(1) Mr. Keith Teel, who is the attorney for the
 (2) Tobacco Institute; is that correct?
 (3) A That's my understanding.
 (4) Q And Chuck Wall, who is an attorney for Philip
 (5) Morris?
 (6) A I don't know.
 (7) Q Do you recall if you read this memo?
 (8) A I probably did. I don't recall specifically. If
 (9) it came across my desk, I probably glanced at it,
 (10) at minimum.
 (11) Q Then lastly is the memo of November '98, it looks
 (12) like here, from Bill Fritz to a series of people,
 (13) including yourself.
 (14) Do you recall this one, relating to a proposed
 (15) restaurant smoking ban in Spokane, Washington?
 (16) A I don't recall the specific memo. I'm sure that
 (17) it came across my desk.
 (18) Q Mr. Fritz is not a lawyer, is he?
 (19) A No, I don't believe so.
 (20) MR. LEEDOM: All right. For the
 (21) record, I'm proposing to counsel, Mr. Butler, that
 (22) we submit the five documents to Judge Finkle for
 (23) en camera review and ruling as to whether or not
 (24) these are actually attorney/client privileged and
 (25) protected documents or not.

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(1) or at least it's a bad copy.
 (2) Q (By Mr. Leedom) Recipient Doug Henken,
 (3) H-E-N-K-E-N, again, relating to the Neighborhood
 (4) Stores case.
 (5) Who is Doug Henken?
 (6) A I believe he is the former executive director of
 (7) the Neighborhood Stores Association.
 (8) Q Okay. Do you know what this letter is, dated
 (9) March of '96?
 (10) A I can't recall, no. I don't know what that is.
 (11) Q Do you know how that might have found its way into
 (12) your files?
 (13) A Probably it was faxed to me.
 (14) Q Then there is a memo, Pages 1247 to 1254, authored
 (15) by Tina Walls -
 (16) MR. BUTLER: You're about to
 (17) lose your tape, Bill.
 (18) MR. LEEDOM: Okay. Let's stop,
 (19) then.
 (20) THE VIDEOGRAPHER: We're going
 (21) off the record at 3:25.
 (22) (Recess at 3:25 p.m.)
 (23)
 (24) THE VIDEOGRAPHER: This is the
 (25) beginning of Tape 2. We are back on the record at

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(1) MR. BUTLER: The proposal is
 (2) noted. I assume if you want to make a motion,
 (3) you're free to do so. I think we can discuss it
 (4) off the record.
 (5) Q (By Mr. Leedom) Now, did you receive, at some
 (6) point in time, a handbook, "Issues Handbook" from
 (7) Philip Morris?
 (8) A Yes.
 (9) Q And what was the purpose of you receiving the
 (10) "Issues Handbook"?
 (11) A I don't know. I believe that I requested it.
 (12) Q It wasn't just sent to you without a request?
 (13) A I don't believe so. I believe I did request it.
 (14) Q Why did you request it?
 (15) A I think as a result of just - when I came on
 (16) board Philip Morris, I asked them if they had such
 (17) a document on various issues. They said they did,
 (18) they sent it to me.
 (19) Q Did you participate in any way in the preparation
 (20) of any "Issues Handbook" after the initial one
 (21) that you received?
 (22) A No.
 (23) Q Were you asked for input?
 (24) A No.
 (25) Q Did you communicate any of the positions set forth

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(1) in the February 1995 handbook to any legislator?

(2) **MR. BUTLER:** Objection;

(3) overly broad, vague, and ambiguous, calls for speculation, lacks foundation.

(5) **A** Not that I recall.

(6) **Q** (By Mr. Leedom) Let me ask you a more general question.

(8) You told me earlier that you don't believe you had ever read a Surgeon General report?

(10) **MR. BUTLER:** Objection;

(11) misstates the witness's prior testimony.

(12) **A** Actually, I said I probably had, but I couldn't recall specifically.

(14) **Q** (By Mr. Leedom) Okay. Tell me what your recollection is, then, on that subject.

(16) **MR. BUTLER:** Objection; asked and answered.

(18) **A** I couldn't remember specifically, but I probably had.

(20) **Q** (By Mr. Leedom) Why do you say that?

(21) **A** Because you see Surgeon General reports or references thereto on occasion when you're looking through materials, whether it's in a newspaper article, whether it's on the side of a pack of cigarettes, whether, you know, it's – I don't

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(1) know. I'm sure that I have.

(2) **Q** I understand that you have seen reference to it,

(3) but I want to know whether you believe that you actually physically read some or all of any Surgeon General's report which have been issued for the past 25 to 30 years?

(7) **MR. BUTLER:** Are you including excerpts from the Surgeon General's report or what's in the media?

(10) **MR. LEEDOM:** Yes.

(11) **MR. BUTLER:** Go ahead and answer.

(13) **A** I think my answer is the same. Not that I specifically recall, but probably have.

(15) **Q** (By Mr. Leedom) Now, one of the positions taken, as of February of 1995, by Philip Morris is that the company recognized cigarette smoking as a risk factor in certain diseases. I want you to assume that's the position that the company has on Page 4 of their "Issues Handbook" of the documents you've provided.

(22) Do you agree with that?

(23) **MR. BUTLER:** Objection; assumes facts not in evidence. The document from which counsel is reading that statement is not in

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(1) evidence, nor has it been shown to the witness nor offered as an exhibit in this deposition. The question, therefore, lacks foundation, is vague and ambiguous.

(5) You do not, Mr. Ducharme, have to rely on counsel's paraphrasing of what the company position is. If there is a document that would refresh your recollection as to what the company position actually was, you have the right to look at it.

(11) **Q** (By Mr. Leedom) Do you want to see it?

(12) **A** Yes, please.

(13) **Q** All right.

(14) **MR. LEEDOM:** This is, for the record, the Philip Morris USA Corporate Affairs Department Issues Handbook, dated February 1995. And it begins at Page 1 of Mr. Ducharme's documents that he has produced.

(19) **MR. BUTLER:** Can you read the entire Bates number, Counsel?

(21) **MR. LEEDOM:** I'm sorry. It's WADTD0001.

(23) **MR. BUTLER:** Thank you.

(24) **MR. LEEDOM:** In fact, any documents that I've referred to will have all the

(1) numbers, except for the last ones that I referred to.

(3) **MR. BUTLER:** And I appreciate that clarification. Thank you.

(5) **Q** (By Mr. Leedom) Now, looking at Page 4 of that document, under the topic "Smoking and Health," it lists Philip Morris USA position, and it says, quote, "Each year since 1964, the Surgeon General has issued a report on some aspect of cigarette smoking and its potential health effects. While we disagree with many of the statements and conclusions of the reports, we do recognize cigarette smoking as a risk factor for certain disease." end quote.

(15) **MR. BUTLER:** "Diseases."

(16) **Q** (By Mr. Leedom) Diseases.

(17) My question is: What is your belief with respect to that issue of smoking and health?

(19) **MR. BUTLER:** Objection; vague and ambiguous in terms of his belief as to the statement, to the content of the statement, to the Philip Morris position, object to his personal beliefs are irrelevant, beyond the scope of the court's order, and also lacks competence, lacks, therefore, foundation, requires speculation on the

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(1) part of the witness.

(2) Go ahead and answer.

(3) **MR. LEEDOM:** Just for the record, I want to say that the court's order specifically does permit any inquiry relating to smoking and tobacco use and health-related issues.

(7) And this is the statement of Philip Morris USA in 1995 with respect to smoking and health.

(9) **MR. BUTLER:** All right. But the witness's personal beliefs are not – are beyond the scope of the court's order, and that was the burden of your question. Unless those beliefs are communicated to the legislators, I think his personal beliefs are out of bounds, but I have not restricted inquiry in that regard.

(16) **MR. LEEDOM:** I understand that. But just for the record, I want to say that if he holds a personal belief, whether or not he communicates it to a legislator is not important. If he does communicate it, that says one thing. If he fails to communicate a belief or knowledge, that's another thing. And so I'm entitled to find out what his beliefs are, what his knowledge is, and whether or not he communicated.

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(1) **MR. BUTLER:** We disagree.

(2) Counsel. My objection stands.

(3) **Q** (By Mr. Leedom) All right. So after all that –

(4) **A** What was your question?

(5) **Q** My question is: Having gone over that with me, the position of Philip Morris USA, is that the position of David Ducharme?

(8) **A** I've already expressed that my personal belief is that without any medical background, that smoking probably, to some people, does put – cause a potential for some health risk. I've told you that.

(13) **Q** So when you read with me the statement on Page 4, is your view or position different than that of Philip Morris USA as of February 1995?

(16) **MR. BUTLER:** Objection; lacks foundation, calls for speculation, beyond the competence of the witness.

(19) **Q** (By Mr. Leedom) Go ahead.

(20) **MR. BUTLER:** And argumentative, by the way.

(22) **A** I pretty much agree with what the statement says, as well as the statement in this particular document that says consumers are aware of the potential health care risk associated with tobacco

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(1) use, warning labels have appeared on every pack of cigarettes since 1966 and every advertisement since then, and the fact that adults are entitled to choose whether or not to smoke, just as they are entitled to make other lifestyle choices that may present potential risks.

(7) MR. LEEDOM: Move to strike everything after the - or after when he began "consumers aware" -

(10) MR. BUTLER: Oppose the motion.

(11) MR. LEEDOM: - or when he started reading.

(13) Q (By Mr. Leedom) So did you communicate to any legislator that it was your belief that cigarette smoking is a risk factor for certain diseases?

(16) MR. BUTLER: Objection; misstates the witness's testimony, also asked and answered.

(19) Go ahead.

(20) A No, I don't believe I ever did.

(21) Q (By Mr. Leedom) Did you ever tell any legislator that you, having read some portions of the Surgeon General report, nevertheless disagree with many of the statements and conclusions of those reports?

(25) MR. BUTLER: Objection;

(1) specifically I want to ask you about Pages 90, 91, and 92.

(3) You might just take a look at this for a moment. This is a memo on Page 90 from you concerning the federal ASSIST program.

(6) A Uh-huh. (Witness answers positively.)

(7) MR. BUTLER: I'll object to inquiry from the document when the document is not placed into evidence, nor have copies been provided to counsel, either counsel defending the deposition or other counsel here present, but...(Pause.)

(13) A I've read it.

(14) Q (By Mr. Leedom) What was the position of Philip Morris with respect to the federal ASSIST program in - I guess it's 1996?

(17) MR. BUTLER: Objection; lacks foundation. To the extent it's based on the document, the document is not in evidence; therefore, the question lacks foundation for that additional reasons, requires the assumption of facts not in evidence, overly broad, vague, and ambiguous.

(24) A I don't know what the company's position was relevant to the entire ASSIST program. I know

(1) misstates the witness's testimony, asked and answered.

(3) A No.

(4) Q (By Mr. Leedom) On Page 20 of this document - that is, Bates stamp 20 - is a subject of addiction. And the Philip Morris USA position on Paragraph 3 is, quote: "Nicotine is not addictive," end quote.

(9) Do you agree with that statement?

(10) A I don't know. I think I answered the question earlier with regard to addiction. I don't have the knowledge to render an opinion with regard to that.

(14) As to myself, I don't feel that it's the case, but I don't know.

(16) Q Do you believe that nicotine is addictive to other people besides David Ducharme?

(18) A I don't know.

(19) MR. BUTLER: Well, first of all, I want to interpose an objection to the last question, just for the record purposes. It's beyond the competence of the witness, lacks foundation, calls for speculation, also beyond the scope of the court's inquiry - or the court's order.

(1) what the company's position was relevant to the documents that you're showing me.

(3) Q (By Mr. Leedom) Okay. What was the - what was the issue that you were addressing in your memo?

(5) A The issue here was that I was provided information, and I cannot recall from where, that indicated that two things were happening with regard to the administration of - of federal ASSIST monies: Number one, that the money that was coming from the federal ASSIST program to the Department of Health was being used by one of their employees who administered the Department of Health's ASSIST program in southwestern Washington, it was being used by her to print materials to be used in their ASSIST program and the printing shop was, in fact, owned by the same woman who was administering it from the Department of Health. So in essence, she was authorizing expenditures and signing vouchers from the Department of Health to her own company, and that was in violation of state and federal law, and that we were asking for an audit on that.

(18) Q Why did Philip Morris have an interest in how those monies were being spent?

(25) A And again, I can't recall exactly where the

(1) Q (By Mr. Leedom) Did you ever communicate to a legislator that it was the position of Philip Morris USA that nicotine was not addictive?

(4) A No.

(5) Q Did you ever communicate to any legislator that it was your personal belief that nicotine was not addictive?

(8) A No.

(9) MR. BUTLER: Objection; misstates the witness's testimony, mis - that will do it.

(12) A No.

(13) Q (By Mr. Leedom) Do you remember there was an issue concerning the federal ASSIST program?

(15) MR. BUTLER: I'm sorry, overly broad, vague, and ambiguous, both as to time and as to the term "issue," and assumes - to the extent - unless you're asking if there was an issue, then it assumes facts not in evidence.

(20) Go ahead.

(21) A Just looking at the documents that you're referring to, I believe I do recall an issue relating to the ASSIST program.

(24) Q (By Mr. Leedom) Let me just show you this, again, beginning at Page 88 of these documents, and

(1) documents came from that indicated that this practice was going on, but, you know, the bottom line is that this is a - an entity that's largely anti-tobacco, that's misusing state and federal funds, and that they should - they should be required, in engaging in their activities, to comply with the law, just as we, as a company, as an industry, are required to comply with law.

(9) Q What entity are you referring to?

(10) A The ASSIST, you mean, or -

(11) Q No, you said there was an entity that you felt should be complying with the law just as you do.

(13) What entity are you -

(14) A Well, Department of Health, Department of Health employees administering ASSIST funds.

(16) Q What was the result of your efforts?

(17) A The result I believe - and the documents are in here and I haven't looked at them in quite some time. The result was the fact that this woman should not have been contracting with their own firm, a State employee should not be contracting with her private firm to use those monies.

(22) Q Did it result in less money being utilized by the youth tobacco prevention account?

(23) A I don't believe so, but I don't know.

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(1) Q Did you actually get Representative Huff to write a letter to the auditor of the state of Washington?
 (2) A Representative Huff did write a letter to the auditor of the state of Washington.
 (3) Q Who drafted that letter up for him?
 (4) A I did.
 (5) Q Now, are you familiar with the – there is a memo in here regarding Stewart Cloud, it's at Page 142 and 143, again, relating to this ASSIST project issue.
 (6) Do you recall that?
 (7) MR. BUTLER: Can we have an indication for the record who the author of the memo is and who the recipient is and some of the identifying information? And I'd also like to see a copy.
 (8) MR. LEEDOM: You certainly may.
 (9) It's – this one is a little hard to tell, actually.
 (10) Q (By Mr. Leedom) Maybe you can tell us, Mr. Ducharme –
 (11) MR. BUTLER: If he knows.
 (12) Q (By Mr. Leedom) – who wrote that.
 (13) A I don't know.

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(1) MR. LEEDOM: Maybe you can take a look at it.
 (2) MR. BUTLER: I have no idea.
 (3) MR. LEEDOM: You can't tell?
 (4) Q (By Mr. Leedom) So let me ask you a general question: Are you familiar with the Stewart Cloud complaint with the – with the State concerning the use of Washington state funds for lobbying efforts?
 (5) MR. BUTLER: Objection. If you're asking him to testify based on the contents of the document, then there is lack of foundation.
 (6) If you're asking for his general recollection apart from any particular document, you may go ahead and answer.
 (7) A Can you ask –
 (8) Q (By Mr. Leedom) It's a general question. I'm going to ask you generally, are you familiar with the Stewart Cloud complaint regarding the use of public funds for lobbying?
 (9) A Vaguely.
 (10) Q Did you get involved in that yourself?
 (11) A I think that that began before I was under contract with Philip Morris. I'm not sure, but I believe that that was before.

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(1) I'm looking here and I see this fax is 11/9/95, so I think that this was activity that was undertaken prior to my coming on in October of '95.
 (2) Q And this ended up in your files. Do you know how?
 (3) A I don't. It probably was faxed to me as reference information.
 (4) Q Okay. Now we have Page 251, which is a program called Action Against Access, and it's a summary. It's a Philip Morris program. I just have a couple questions regarding this rather lengthy document.
 (5) It says at the beginning, on Page 251, quote.
 (6) "At Philip Morris USA, we have always believed that minors should not smoke, nor should they have access to cigarettes. Smoking is and must remain strictly an adult choice. Much has been done over the years to limit youth access to cigarettes, including our support of passage of legislation which made it illegal in all 50 states to sell cigarettes to minors." end quote.
 (7) I want to know whether or not that is your belief, as well.
 (8) MR. BUTLER: Objection: lacks foundation, also it's vague and ambiguous, also

(1) it's beyond the scope of the court's permitted inquiry in this case.
 (2) Go ahead.
 (3) A Yeah, I think that closely mirrors my personal beliefs.
 (4) Q (By Mr. Leedom) Is there anything different about your beliefs versus what was said in this statement?
 (5) MR. BUTLER: Well, object. The statement has – does not have beliefs. It has statements as to fact or Philip Morris's position –
 (6) MR. LEEDOM: Used as a term "belief."
 (7) MR. BUTLER: It also recites several facts and activities undertaken by Philip Morris, but that's – are you asking if he has done those same things?
 (8) I mean, I'll object on the grounds it's vague and ambiguous. I don't want to burden the record further.
 (9) A You know, I don't know. I smoked as a minor and felt like I was making my own choice at the time.
 (10) I don't – you know, I suppose that they, you know, they shouldn't smoke, but I think that

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(1) people make their own choices.
 (2) Q (By Mr. Leedom) Have you ever seen any internal documents from Philip Morris or any tobacco company which demonstrates that Philip Morris, or whoever authored the document, in fact was attempting to promote the use of cigarettes and other tobacco products by minors?
 (3) MR. BUTLER: Objection: assumes facts not in evidence, lacks foundation.
 (4) A No, not that I can recall.
 (5) Q (By Mr. Leedom) Have you ever seen a Philip Morris document which indicates that Philip Morris is, in fact, trying to get minors to use their products?
 (6) MR. BUTLER: Assumes a fact not in evidence, so I object.
 (7) Go ahead and answer.
 (8) A I think it's the same question, but, no, I'm not, not to the best of my knowledge.
 (9) Q (By Mr. Leedom) Now, there is another section of your documents, beginning at Page 348, which is called "Washington State Plan for PMUSA," which I assume is Philip Morris USA, "Federal Legislation Project."
 (10) Do you see those documents?

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(1) A Yes.
 (2) Q What was the Federal Legislation Project?
 (3) MR. BUTLER: Excuse me, Counsel, are we going to mark those and put those in evidence?
 (4) MR. LEEDOM: I will show them to you. You can take a look.
 (5) MR. BUTLER: Thank you.
 (6) Q (By Mr. Leedom) Can you tell me what that project was?
 (7) A Yeah. Essentially what it was was Philip Morris, and I don't recall if it was other members of the tobacco industry or not, had a proposal for federal legislation that would have mirrored many of the provisions being proposed by the Food and Drug Administration for implementing regulations to curb youth access to cigarette and tobacco products. And they essentially produced a document that laid out, side by side, the industry or company proposal as compared to the FDA-proposed regulations.
 (8) And I believe that this project was to make sure that members of the state legislature, the governor's office, and some agency folks knew what the industry's proposal was in that regard. In an

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(1) effort to hopefully gain their support for
 (2) whatever end that that might serve.
 (3) Q Wasn't the goal of the industry to avoid FDA
 (4) regulation?
 (5) MR. BUTLER: Objection; lacks
 (6) foundation, assumes facts not in evidence,
 (7) argumentative.
 (8) A I don't know that firsthand knowledge, but I
 (9) assume that that's probably the case.
 (10) Q (By Mr. Leedom) Do you know why Philip Morris did
 (11) not want to be regulated by the FDA?
 (12) MR. BUTLER: Objection; assumes
 (13) facts not in evidence, lacks foundation, calls for
 (14) speculation.
 (15) A I could only speculate.
 (16) Q (By Mr. Leedom) You don't have any information at
 (17) all?
 (18) A I think that I have some information on the
 (19) company's position in that regard.
 (20) I guess most strikingly was a position that –
 (21) that the FDA had no legal authority to assert
 (22) jurisdiction in this area and that Congress had,
 (23) for many years, made it clear that they didn't
 (24) have that type of regulatory authority and it had
 (25) regulated the tobacco industry through other

(1) that I really took an active role – I didn't take
 (2) an active role in at all.
 (3) Q Okay. There is Page 755 of your documents
 (4) that shows a man in Michigan with a headline,
 (5) "Cigarette Tax Take Goes Up In Smoke. Sales
 (6) Plunge Following 50-Cent Boost."
 (7) MR. BUTLER: May I see that.
 (8) Counsel?
 (9) Q (By Mr. Leedom) Did you review this particular
 (10) document or story?
 (11) A At some point in time I'm sure that I probably
 (12) did.
 (13) MR. BUTLER: The date on it is
 (14) 12/12/94, and the date of the newspaper articles
 (15) that are related to it are similarly dated, so
 (16) it's outside the time frame.
 (17) Q (By Mr. Leedom) Well, presumably you received
 (18) this during the time you were working for Philip
 (19) Morris?
 (20) A Presumably.
 (21) Q Have you ever made the argument to a legislator or
 (22) to a committee that if you raise the taxes, then
 (23) the sales of cigarettes will plunge, will go down?
 (24) A No, I don't believe so.
 (25) Q Okay. I want to show you Page 798, entitled "True

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(1) mechanisms; the federal cigarette labeling act in
 (2) allowing the states to have a certain hold in that
 (3) regard. And that's the extent of my knowledge
 (4) there.
 (5) Q By the way, when these documents were being
 (6) organized, did you organize them yourself and
 (7) write – for example, this section says "Tax
 (8) Issues." Is that your writing?
 (9) A Yes.
 (10) Q So you divided them up?
 (11) A Uh-huh. (Witness answers positively.)
 (12) Q All right. Then we have Page 694, the court's
 (13) opinion on summary judgment on the Neighborhood
 (14) Stores versus Department of Revenue case.
 (15) Did you keep abreast of developments in that
 (16) case?
 (17) A No.
 (18) MR. BUTLER: Objection; it's
 (19) outside the time frame, but the answer can stand.
 (20) A No.
 (21) Q (By Mr. Leedom) Did you play any role in this
 (22) whatsoever?
 (23) A No.
 (24) Q Did Philip Morris play any role, to your
 (25) knowledge, in that – on that issue?

(1) Cost of Smoking," and then it says down here that
 (2) "Smokers Taxed Enough."
 (3) Do you recall this document?
 (4) MR. BUTLER: May I see it.
 (5) Counsel?
 (6) MR. LEEDOM: Sure.
 (7) MR. BUTLER: For the record, the
 (8) fax on the letter is dated 8/13/95. There is no
 (9) indication of the date of the document, although
 (10) it refers to a 1994 cigarette taxation study.
 (11) I'll object to, at least *prima facie*, that
 (12) it's outside the scope of the examination. There
 (13) is no showing the witness saw it during the
 (14) involved time frame, lacks foundation, it's not in
 (15) evidence.
 (16) Go ahead.
 (17) A Well, yeah, I've seen that before.
 (18) Q (By Mr. Leedom) Did you ever present this
 (19) information to any legislator, either directly, by
 (20) this document, or verbally?
 (21) A Not that I recall, no.
 (22) Q Have you ever taken the position with a legislator
 (23) that smokers are taxed enough and that any
 (24) increase in the taxes or the tax burden on a pack
 (25) of cigarettes would be contrary to the interest of

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(1) MR. BUTLER: Excuse me. I'll
 (2) object to the extent it calls for attorney/client
 (3) work product privilege.
 (4) You should answer to the best of your ability,
 (5) unless it relates to conversations you've had with
 (6) counsel.
 (7) MR. LEEDOM: I don't think it's
 (8) outside the time frame, by the way. The order was
 (9) entered March 19th, 1996.
 (10) MR. BUTLER: The results were,
 (11) yes; the work was not. But we've not restricted
 (12) the inquiry in any event, so... (Pause.)
 (13) Q (By Mr. Leedom) So do you have any knowledge as
 (14) to what the issue was there?
 (15) A Not specifically, I can't recall. If I can look
 (16) at the document, it might jog something in my
 (17) mind.
 (18) Q I think in the first paragraph it says that the
 (19) plaintiff, Neighborhood Store group, was trying to
 (20) get a tax issue declared unconstitutional.
 (21) A Yeah, this was before my time, obviously, when
 (22) this issue arose in the legislative process. I
 (23) think that it was in 1993, so I am vaguely
 (24) familiar with the issue before the court here.
 (25) I just perused this stuff. It wasn't anything

(1) the state of Washington?
 (2) MR. BUTLER: Objection; overly
 (3) broad and vague.
 (4) Go ahead.
 (5) A Not specifically as you've stated it, no.
 (6) Q (By Mr. Leedom) Well, have you ever taken the
 (7) Philip Morris position – strike that.
 (8) Does Philip Morris have a position that
 (9) smokers have been taxed enough?
 (10) A I think generally, yeah. I think they do.
 (11) Q Now, to your knowledge, has Philip Morris ever
 (12) evaluated the actual health care impact of their
 (13) products on the state of Washington?
 (14) MR. BUTLER: Objection; asked
 (15) and answered, and lacks foundation.
 (16) A Not to my knowledge.
 (17) Q (By Mr. Leedom) Would you agree that if the
 (18) actual health care costs would require a tax of
 (19) \$2.00 a pack, that that would be an appropriate
 (20) tax –
 (21) MR. BUTLER: Objection –
 (22) Q (By Mr. Leedom) – on Philip Morris products?
 (23) MR. BUTLER: Objection, assumes
 (24) facts not in evidence, beyond the competence of
 (25) the witness, calls for an opinion, lacking

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(1) foundation by this witness, outside the scope of the document, outside the scope of the court's inquiry insofar as it relates to matters not communicated to legislators.

(5) Go ahead and answer.

(6) **A** I don't know.

(7) **Q** (By Mr. Leedom) Do you recall earlier we talked about Senator John Moyer?

(9) **A** Yes.

(10) **Q** Do you know Dr. Moyer?

(11) **A** I've met him before, yes.

(12) **Q** Let me show you exhibit 850 – Page 850?

(13) **MR. BUTLER:** Page 850.

(14) **Q** (By Mr. Leedom) – dated – I think it's December 7th, 1995.

(15) **MR. BUTLER:** For the record, it's a memorandum from the Cigarette Tax and Revenue Loss Advisory Committee members from Senator Moyer, consisting of six pages. There is an attachment entitled "Tobacco Taxation in the United States, Effect of Excise Taxes on Consumption," the source of that document unknown, and that goes on for the next seven or eight pages. And then there is an attachment, seems to be – it's from a document entitled "Growing Up

(1) Tobacco Free," again, no indication of the source of that document.

(3) **Q** (By Mr. Leedom) All right. Take a look at that document, if you would.

(5) **MR. BUTLER:** What's the beginning Bates number, Mr. Ducharme?

(7) **THE WITNESS:** I don't know –

(8) **MR. BUTLER:** 0850. Thank you.

(9) **A** Would you like me to read the entire document?

(10) **Q** (By Mr. Leedom) Why don't you just take a look at it, scan it, and then I'm going to ask you two or three questions about it. I don't think you need to read the entire document, unless you really see the need to.

(15) **A** Okay.

(16) **Q** First of all, have you ever talked to Senator Moyer about cigarette tax reduction?

(18) **A** No.

(19) **Q** Now, on the bottom of Page 850, there is a section entitled "The Ravages Of Tobacco." And it indicates that, quote, "Tobacco is the only consumer product that, when used as directed, causes death. In fact, it has been shown to account for 90 percent of lung cancer deaths, more than 80 percent of all chronic obstructive

(1) pulmonary disease deaths, and 30 percent of all cancer deaths. Nationally, no less than 400,000 deaths, or 19 percent of all deaths in 1990, were attributable to tobacco. In Washington in 1990, 7,993 deaths were attributable to tobacco use, just less than five times the combined total of the number of deaths attributable to motor vehicle collisions, AIDS, and homicides," end of quote.

(9) **MR. WILSON:** Excuse me, Bill, to whom was that quote in that letter that you just read directed? I don't have it before me.

(12) **MR. LEEDOM:** It was to the Cigarette Tax and Revenue Loss Advisory Committee members from Senator Moyer.

(15) **Q** (By Mr. Leedom) My question, Mr. Ducharme, is: Have you ever communicated that statistical information to any legislator or any staff member for a legislator or any legislative committee?

(19) **MR. BUTLER:** Objection. First of all, that requires the witness to assume facts not in evidence, specifically the contents of the document counsel is reading from; secondly, it implies a willingness by the witness to assume that the, quote, "statistics," end quote, recited by Senator Moyer are in fact, quote, "statistics,"

(1) end quote, in the sense of being true, accurate, correct, or in any other way supported by any relevant, credible, or scientific evidence; three, requires the witness to assume Senator Moyer's other statements are correct.

(6) It's beyond the scope of the court's inquiry as to what Senator Moyer may have represented to anybody, let alone this witness, so to that extent it calls for testimony beyond the scope of the court's order, requires speculation beyond the competence of the witness, and I would object to the fact that it assumes facts not in evidence.

(13) But go ahead. I think the question was did you ever communicate anything like that.

(15) **A** No.

(16) **Q** (By Mr. Leedom) Why didn't you?

(17) **MR. BUTLER:** Objection, assumes facts not in evidence, assumes – I'll repeat all the prior objections for shorthand, Counsel.

(20) **A** I never felt the need. It never came up.

(21) **Q** (By Mr. Leedom) Well, you did read this particular letter from Senator Moyer, didn't you?

(23) **A** At one point in time, yes.

(24) **Q** And when you read this information, specifically the paragraph I just read to you, did that come as

(1) a surprise to you?

(2) **MR. BUTLER:** Objection; requires the witness to assume the truth of the facts stated in the letter, which is not in evidence and for which there is no foundation.

(6) **A** It didn't strike me one way or the other. I have no idea on the reliability of that data, the truthfulness of that data, that information.

(9) It's fairly clear that Senator Moyer believed it and chose to provide it to individuals, so the information clearly was out there.

(12) **Q** (By Mr. Leedom) Is that why you didn't communicate it to anybody, because you didn't think it was reliable?

(15) **A** I just didn't think about communicating it. As I answered before, it didn't come up. Nobody asked me to provide the information, and I don't have – I didn't find the information in any way useful for any anything that I was doing during that time period.

(21) **Q** Well, as a lobbyist advocating the position of Philip Morris, if you believe that information was true and reliable, wouldn't you be under a duty to advise legislators, legislative committees, or staff members of that information?

(1) **A** No.

(2) **MR. BUTLER:** Objection; requires multiple assumptions of facts not in evidence, requires a legal conclusion, I think at least potentially, or requests a legal conclusion, it's outside the scope of the court's direction for inquiry in this deposition, and it's argumentative in the extreme.

(9) **A** No.

(10) **Q** (By Mr. Leedom) A couple other questions on this document.

(12) The next paragraph talks about the cost of tobacco addiction, illness, and death, and there was a calculation made that the direct and indirect costs of tobacco to be no less than \$2.59 per pack of cigarettes.

(17) What was your reaction when you read that particular piece of information in this document?

(19) **MR. BUTLER:** Will you grant me my prior objections to similar things?

(21) **MR. LEEDOM:** Yes.

(22) **MR. BUTLER:** Well, prior objections that will stand, and in addition, it requests commentary on the thought processes of Senator Moyer, which are not before this witness.

(1) and not properly the subject of inquiry in this
 (2) deposition.
 (3) Go ahead.
 (4) A I don't recall having had any reaction to reading
 that.
 (5) Q (By Mr. Leedom) If you were advocating, on behalf
 of Philip Morris, a reduction in the tax on
 cigarettes, how could you justify doing that if,
 in fact, the total direct and indirect cost of
 tobacco is \$2.59 per pack?
 (6) MR. BUTLER: Repeat all my prior
 objections. In addition, misstates the witness's
 prior testimony.
 (7) A I don't have any idea as to whether or not that's
 true, so therefore, it's not of any use to me.
 (8) Q (By Mr. Leedom) If it was true - I'm going to
 ask you to assume that it is true. Wouldn't you
 feel a duty, an obligation, to communicate that to
 any legislator to whom you are addressing the
 issue of the taxation of cigarettes?
 (9) MR. BUTLER: I'll repeat all my
 prior objections and add it's an incomplete and
 improper hypothetical based on assumption of facts
 that probably could not be put into evidence, and
 it's beyond the scope of the court's inquiry, as

(1) MR. LEEDOM: Well - go ahead.
 (2) MR. BUTLER: I'm going to
 instruct the witness not to answer if this line of
 questions is pursued.
 (3) MR. LEEDOM: Let me just say for
 the record I think it's very relevant, because it
 was a document he received during the time frame,
 from a senator, who is also a physician, which
 includes multiple citations of fact, and from what
 I can tell, the witness did no research whatsoever
 to verify it and, yet, contends that it's
 unreliable information and admits that he did not
 provide this information to any legislator or
 legislative committee member or staff member.
 (4) And I think that's all relevant in terms of the
 order, which deals with this whole subject of
 communications between Mr. Ducharme and the
 legislature.
 (5) However, I will respect your instruction of
 the witness not to answer and I will move on to
 another topic.
 (6) MR. BUTLER: Let me just state
 my position for the record, since you have done
 so.
 (7) First, the document is not in evidence in this

(1) directed by his order of February 17th, 1998.
 (2) A I don't believe so.
 (3) Q (By Mr. Leedom) Why not?
 (4) A If you look at where we direct - where the state
 of Washington directs cigarette excise taxes
 today, very little of it, if any, has to do with
 the actual consumption of smoking cigarettes.
 (5) So I don't think it's incumbent - if this
 were true, I think that it's incumbent upon the
 state - if the state is so concerned in that
 fashion, that they direct some of those funds
 towards that purpose or towards that end. And
 they have not done so so far, so I don't feel the
 need to - to do that if they don't care.
 (6) Q Well, would you feel the need on behalf of Philip
 Morris to advocate a higher cigarette tax to cover
 the actual health care costs?
 (7) MR. BUTLER: Objection; assumes
 facts not in evidence, assumes multiple facts not
 in evidence, an improper and incomplete
 hypothetical, it's argumentative and it's way
 beyond the scope of the court's 19 - February
 17th, 1998 order.
 (8) Q (By Mr. Leedom) Go ahead.
 (9) MR. BUTLER: I'm not sure - I'm

(1) deposition; secondly, you misstated the witness's
 (2) prior testimony with respect to the document;
 (3) thirdly, it is a representation not of Philip
 Morris and not of its lobbyists but a senator of
 the legislature, who the court has said we cannot
 probe the mind of; fourth, the document was
 apparently distributed widely throughout the
 legislature by the senator itself, so it was
 already out there.
 (10) Now, I don't think that we need to debate the
 issue here. If you want to make a motion, you can
 do so and we'll respond appropriately.
 (11) MR. LEEDOM: I'll make a big
 (12) stack I'll flip over here.
 (13) Q (By Mr. Leedom) This is Page 1661, it is called
 the "Tax Burden on Tobacco, Historical
 Compilation, 1994, prepared by the Tobacco
 Institute." And it's a very long document.
 (14) MR. LEEDOM: And I believe it
 (15) goes up through Page 1908, for the record.
 (16) Q (By Mr. Leedom) Did you review, at some point in
 time, this document, the tax burden on tobacco?
 (17) A I reviewed portions of that document.
 (18) Q Who sent that to you?
 (19) A I believe it was sent to me by Tracey Scott.

(1) debating about where we're going with this. Just
 (2) wait.
 (3) I'll allow one further answer, but if we
 (4) pursue this question - this point of hypothetical
 (5) questions on what might have happened if something
 (6) was or was not true, I'm going to object and
 (7) instruct the witness not to answer and seek a
 (8) protective order from the court.
 (9) You can answer the last question.
 (10) A I don't know. I don't think so.
 (11) Q (By Mr. Leedom) I'm trying to understand why you
 (12) don't think so. That's - that was the point of
 (13) my question.
 (14) A Well, you're assuming something that we don't
 (15) know -
 (16) MR. BUTLER: Last question was
 (17) asked, last question was answered.
 (18) MR. LEEDOM: I don't think he
 (19) answered it. That's my problem.
 (20) MR. BUTLER: I think he did.
 (21) Counsel. And at this point, I'm going to ask you
 (22) to move on to another area of questioning. I
 (23) think we're way beyond the scope of the court's
 (24) order permitting this deposition to go forward.
 (25) and -

(1) Q The same Tracey Scott that hired you?
 (2) A Yes.
 (3) Q At that time, in 1995/96, what was her job?
 (4) A I think she was assistant regional director for
 (5) Philip Morris.
 (6) Q So it didn't really change in that time frame,
 (7) from what it was when you first met her?
 (8) A Yeah, I don't believe so.
 (9) Q I'm not going to ask you a lot of questions
 (10) about this, but the forward of this talks about
 (11) President Clinton's proposed tax increase,
 (12) 75-cent-per-pack increase in 1994.
 (13) In this particular document, it says, quote,
 (14) "The tax would have severely punished tens of
 (15) millions of smokers, as well as the communities
 (16) that rely on the income tobacco generates," end
 (17) quote.
 (18) Did you ever make that argument to any
 (19) legislator or legislative committee that an
 (20) increase in tobacco taxes would punish smokers and
 (21) impact, adversely, economies?
 (22) A I don't believe so -
 (23) MR. BUTLER: First of all, I
 (24) object that the document is not in evidence.
 (25) You're paraphrasing a document that has relevance

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(1) to the national scene with respect to a federal
 (2) tax, but the witness has answered. His answer can
 (3) stand.
 (4) Q (By Mr. Leedom) You have not made that argument?
 (5) A No, I haven't read that.
 (6) Q (By Mr. Leedom) Oh, okay.
 (7) Do you agree with this statement: Quote, "All
 (8) members of society should pay their fair share.
 (9) It is unfair to ask one element of society or one
 (10) region of the country to pay more than its fair
 (11) share," end quote?
 (12) MR. BUTLER: Object; it's
 (13) outside the scope of the court's permitted
 (14) inquiry, it's outside the time frame, it's
 (15) irrelevant as to whether he agrees with that or
 (16) not, absent a showing that that statement was
 (17) played to a legislator, there is no foundation.
 (18) It's also vague and ambiguous as to its context.
 (19) But go ahead.
 (20) A Generally with regard to anything that somebody
 (21) hasn't participated in, if you don't drive, maybe
 (22) you don't pay as much for roads; if you don't live
 (23) in a neighborhood, you don't pay for its schools.
 (24) Q (By Mr. Leedom) But did you ever make the
 (25) argument to any legislator, legislative committee,

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(1) staff member of a legislator, that you felt that
 (2) taxes on tobacco products, specifically Philip
 (3) Morris products, should not be increased because
 (4) that would mean that your client was paying more
 (5) than its fair share?
 (6) A No.
 (7) MR. LEEDOM: Let's take a
 (8) five-minute break. I may be nearing completion.
 (9) THE VIDEOGRAPHER: We're going
 (10) off the record at 4:28.
 (11) (Recess at 4:28 p.m.)
 (12)
 (13) THE VIDEOGRAPHER: We are back
 (14) on the record at 4:32.
 (15)
 (16)
 (17) EXAMINATION (Continuing)
 (18) BY MR. LEEDOM:
 (19) Q I want to ask you a few more questions about
 (20) positions that you have advocated on behalf of
 (21) Philip Morris.
 (22) MR. LEEDOM: As soon as I get
 (23) the microphone back on here.
 (24) MR. WILSON: You don't need it.
 (25) MR. LEEDOM: I probably don't

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(1) need it.
 (2) Q (By Mr. Leedom) With respect to these Indian
 (3) smoke shops, you alluded to the fact that
 (4) sometimes people go to other locations to buy
 (5) cigarettes.
 (6) Have you ever advocated a position to any
 (7) legislator or legislative body with respect to
 (8) Indian smoke shops?
 (9) A No.
 (10) Q Have you ever advocated a position with respect to
 (11) secondhand smoke?
 (12) A No.
 (13) Q Have you ever advocated a position to any
 (14) legislator or legislative body with respect to
 (15) advertising of tobacco products?
 (16) A I don't believe so.
 (17) Q Have you ever advocated a position with respect to
 (18) restrictions on minor access to tobacco products?
 (19) A We're still talking about the period between
 (20) October - no.
 (21) Q Have you ever advocated a position to any
 (22) legislator or legislative body with respect to
 (23) penalties imposed upon convenience stores or other
 (24) places of business which sell tobacco products to
 (25) minors?

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(1) A Could we go back to the question before? I'd like
 (2) to clarify my response.
 (3) Q Minor access, yeah -
 (4) A On minor access, I believe that I have described
 (5) some of the company's programs and initiatives
 (6) with regard to -
 (7) Q You did that.
 (8) A - youth access issues, but not specifically
 (9) related to legislation during that period of time.
 (10) Q My question was tied to legislation.
 (11) A Okay.
 (12) Q Okay.
 (13) A I'm sorry, then your follow-up question...?
 (14) Q My follow-up question related to penalties. Have
 (15) you ever taken a position with a legislator or a
 (16) legislative body with respect to the imposition of
 (17) penalties upon those who sell tobacco products to
 (18) minors?
 (19) A No, not during that time period, no.
 (20) Q On the document entitled "Issues Handbook," dated
 (21) February 1995, from Philip Morris USA, Page 6,
 (22) there is a reference to consumer excise taxes.
 (23) And in the executive summary, Paragraph 2, it
 (24) indicates Philip Morris USA, quote, "strongly
 (25) opposes cigarette excise taxes for several

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(1) reasons," and it sets forth the reasons as
 (2) follows: "Excise taxes unfairly single out one
 (3) group of consumers to pay for government services
 (4) that benefit everyone; two, excise taxes take a
 (5) much larger percentage of income from working
 (6) people than from the rich, excise taxes cost jobs,
 (7) as higher prices drive down sales," end quote.
 (8) Have you ever advocated any of those points,
 (9) on behalf of Philip Morris USA, to any legislator
 (10) or legislative body?
 (11) A I think that I have made the argument that
 (12) cigarette smokers pay for programs that other
 (13) people don't pay for and it unfairly singles them
 (14) out. I think I've made that argument, yes.
 (15) Q Who have you made that argument to?
 (16) A I've made that argument to a number of
 (17) legislators.
 (18) Q Can you name any of them?
 (19) A Not specifically, but I could probably tell you
 (20) with certainty that I've talked to maybe 20 or 30,
 (21) in the course of talking about taxes and equity
 (22) relative to taxation and where it goes.
 (23) Q All right. Tell me the gist of what you said to
 (24) these 20 or 30 legislators.
 (25) A Well, I think I've said, you know, pretty much

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(1) exactly this. Look at the Puget Sound water
 (2) quality account; you know, I think 80 cents out of
 (3) every pack of cigarettes goes into cleaning up
 (4) Puget Sound. If you look at the Youth Violence
 (5) Reduction Act, there is a significant portion of
 (6) the excise tax that goes into those programs;
 (7) general fund programs, it's disproportionate to
 (8) what other people pay. I think it's pretty clear
 (9) on its face.
 (10) I haven't really argued beyond that, because
 (11) it's apparent.
 (12) Q I don't understand what you say - what you mean
 (13) when you say it's disproportionate to what other
 (14) people pay. What do you mean by that?
 (15) A Well, for example - or lacking in excess, if you
 (16) will, as well. But if you look at the water
 (17) quality account and 80 cents per pack goes into
 (18) cleaning up Puget Sound, for example, that's
 (19) something that smokers are bearing a large brunt
 (20) of that burden relative to other people who use
 (21) and enjoy and live in the area.
 (22) Q I thought you told me that you felt that adults
 (23) choose to smoke.
 (24) A I did. I think it's consistent with that
 (25) statement, as well.

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(1) Q So are they not choosing to then pay the taxes?
 (2) MR. BUTLER: Objection;
 (3) misstates the witness's prior testimony. It is
 (4) argumentative. It also, I think, calls for a
 (5) legal conclusion as to what - whether one chooses
 (6) to pay excise taxes imposed by force of law, and I
 (7) think it misstates the import of the witness's
 (8) testimony.
 (9) Q (By Mr. Leedom) Can you answer the question?
 (10) A Can you restate it, please?
 (11) Q Well, you've told me that it's an adult choice and
 (12) people choose to smoke and, therefore, aren't they
 (13) choosing to pay the taxes?
 (14) A Well, people buy cars and choose to pay the excise
 (15) tax in Washington state, although they don't like
 (16) it, you know. So I guess I can say that to some
 (17) degree, yes, they choose it, but they don't have
 (18) to like it and they can seek to change it.
 (19) Q Well, they can change it by not smoking.
 (20) MR. BUTLER: Objection; it's
 (21) argumentative.
 (22) Q (By Mr. Leedom) True?
 (23) MR. BUTLER: It's argumentative.
 (24) A True that they would not contribute to that
 (25) particular fund or those other funds if they chose

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(1) not to smoke.
 (2) Q (By Mr. Leedom) And just so we're clear, Philip
 (3) Morris USA, your client, they don't pay any excise
 (4) taxes?
 (5) MR. BUTLER: Objection;
 (6) misstates the witness's - misstates the record.
 (7) it's beyond the scope of the witness's knowledge,
 (8) it's also vague and ambiguous as to not
 (9) distinguishing between the federal and state
 (10) excise taxes.
 (11) Q (By Mr. Leedom) State excise taxes.
 (12) MR. BUTLER: Lacks foundation.
 (13) Q (By Mr. Leedom) Isn't that true? Philip Morris
 (14) isn't paying those consumer excise taxes that Page
 (15) 6 is referring to, right?
 (16) MR. BUTLER: Objection; lacks
 (17) foundation.
 (18) You can answer.
 (19) A Yeah, correct.
 (20) Q (By Mr. Leedom) So what they're doing in opposing
 (21) consumer excise taxes, as they strongly suggest
 (22) they are, state they are here, aren't they
 (23) basically protecting this group of consumers;
 (24) namely, their smoking consuming public?
 (25) MR. BUTLER: Objection; it's

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(1) argumentative, it's beyond the scope of the
 (2) court's order to the extent that it refers to
 (3) excise taxes generally, it does not refer to a
 (4) specific piece of legislation, it does not refer
 (5) to any piece of legislation that this witness gave
 (6) any information on to legislators, whether at
 (7) their request or otherwise. And I would object
 (8) and instruct the witness not to answer. It is
 (9) simply argumentative.
 (10) Q (By Mr. Leedom) Did you, at any time, other than
 (11) the argument about singling out one group of
 (12) consumers, make any other arguments to any
 (13) legislator or legislative body, as are set forth
 (14) in Paragraph 2 of Page 6 that I read earlier?
 (15) A No.
 (16) MR. LEEDOM: All right. That's
 (17) all the questions I have today. However, I
 (18) reserve the right to ask further questions of the
 (19) witness on the following grounds: Number one, if
 (20) the judge, Judge Finkle, permits the privileged
 (21) documents, any or all of them, to be released to
 (22) us, such that we could ask Mr. Ducharme about
 (23) those; and secondly, we reserve with respect to
 (24) any additional documents that have not yet been
 (25) produced by Philip Morris or any of the defendants.

(Continued)

(18) of 1998.
 (19) Carmen M. Knudson, CCR, RPR
 (20) Notary Public in and for the State
 (21) of Washington, residing at Tacoma.
 (22)
 (23)
 (24)
 (25)

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Look-See Concordance Report

UNIQUE WORDS: 2,110
 TOTAL OCCURRENCES: 9,305
 NOISE WORDS: 384
 TOTAL WORDS IN FILE: 25,855

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DATES ON

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